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May 13, 2009

Lou Ann Texeira  
Executive Officer  
Contra Costa LAFCO  
651 Pine St. 6<sup>th</sup> Floor  
Martinez, CA 94553

**Re: Comments – Initial Study/Negative Declaration – Sphere of Influence Expansion – City of Pittsburg, Delta Diablo Sanitary District, and Contra Costa Water District**

Dear Ms. Texiera:

Save Mount Diablo (SMD) appreciates the opportunity to provide the following comments regarding the Initial Study/Negative Declaration (“IS/ND”) for expansion of the Sphere of Influence (SOI) for the City of Pittsburg, Delta Diablo Sanitary District (DDSD), and Contra Costa Water District (CCWD).

Save Mount Diablo’s main concerns focus on impacts to SOI Area A and SOI Area D, which include Pittsburg’s Southwest Hills and the Thomas Ranch area south of Pittsburg.

**SMD’s Position**

Save Mount Diablo believes that the proposed SOI expansion projects are incompatible with the goals and standards of Contra Costa LAFCO and would set dangerous precedents for planning in the region. As a result, **we urge LAFCO to deny these proposals.**

If LAFCO decides to move forward with the proposals and continue the CEQA process, SMD believes that the proposed negative declaration is inadequate and **a full environmental impact report needs to be prepared to sufficiently analyze the SOI expansions.**

The Initial Study incorrectly concludes that a Negative Declaration is appropriate for the project because the EIR for Pittsburg’s General Plan sufficiently analyzed the environmental setting and the potentially significant impacts of the Southwest Hills and the Thomas Ranch. Furthermore, the initial study contends that further CEQA review would be required for any project proposed in the future.

Save Mount Diablo believes that the General Plan EIR is insufficient and future environmental review for projects in these areas is too late in the process. The Sphere of Influence expansions will have significant growth inducing impacts in these areas. A full EIR should be prepared to analyze these significant impacts.

### **LAFCO Policies and Standards**

Save Mount Diablo is opposed to the proposed SOI expansions into Pittsburg's Southwest and Southern Hills and has provided both written and verbal comments to LAFCO expressing our positions throughout the Municipal Service Review process.

Save Mount Diablo believes that the SOIs for the City of Pittsburg, CCWD and DDS D should be retained in their existing area. It is inappropriate to extend the spheres of these districts unless a project has been proposed that would require the expansion of services. Furthermore, we believe that such a proposal is inconsistent with the duties, policies, and standards of LAFCO.

### ***Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000***

The Cortese-Knox-Hertzberg Act is the basis for the California Civil Code which dictates that each County in the state must have a Local Agency Formation Commission and determines the purview of those commissions.

Government Code Section 56001 states:

The Legislature finds and declares that it is the policy of the state to encourage orderly growth and development which are essential to the social, fiscal, and economic well-being of the state. The Legislature recognizes that the logical formation and determination of local agency boundaries is an important factor in promoting orderly development and in balancing that development with sometimes competing state interests of **discouraging urban sprawl, preserving open-space and prime agricultural lands**, and efficiently extending government services. (Emphasis added)

According to state law, the purpose of LAFCO is to emphasize the importance of protecting open space and agricultural resources while discouraging sprawl development that destroys these resources.

The proposed SOI expansions would extend the planning areas of the City of Pittsburg, DDS D, and CCWD into areas that are part of a significant stretch of open space which extends from Suisun Bay through Central and Eastern Contra Costa County to Livermore and Eastern Alameda County. This vast open space corridor includes a number of parks and preserves which protect the natural resources of the area including Black Diamond Mines Regional Preserve which is adjacent to the Thomas Ranch at SOI Area D and the proposed Concord Naval Weapons Station Regional Park which is adjacent to Pittsburg's Southwest Hills in SOI Area A.

Approval of the SOI expansions would have growth inducing impacts which would lead to sprawl development and increased impacts on the area's open spaces and agricultural resources. In other words, the proposed SOI expansions would promote precisely the type of growth and development that LAFCO is meant to discourage and avoid.

### ***Land Use Planning***

LAFCO policies require that consideration of the existing and planned land uses for a territory proposed to be covered by a sphere expansion plays a central role in determining whether expansion is appropriate.

According to the Contra Costa County LAFCO Commissioners Handbook:

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 the territory sought to be added to the SOI. (Contra Costa County LAFCO Commissioner Handbook, Section 2.1: Policies and Standards, Part D: Policy on Spheres of Influence and Annexations.)

It does not appear as though adequate consideration has been given to proposed land uses in the territories that would be included in the SOI expansion. The City of Pittsburg is currently considering a variety of planning and land use proposals for both the Southwest Hills (SOI Area A) and the Thomas Ranch (SOI Area D) areas.

Between 2006 and the summer of 2008 the City of Pittsburg was considering Hillside Development Regulations for the Southwest hills, as is required by the City's General Plan. These Standards would determine the location and intensity of development allowed in the southwest hills. The City suspended their work on the creation of the Hillside Regulations in 2008 with no decisions about where development should occur in that area. It makes no sense to expand the Spheres of Influence to the southwest hills until it is determined which areas are going to be open for development and whether any areas will be designated as open space

On September 2, 2008 the Pittsburg City Council voted to initiate a study to amend the General Plan and pre-zoning designations to rezone the Thomas Ranch to Open Space. If the City of Pittsburg intends to rezone Thomas Ranch property as open space, then no future development projects should occur on the property and there is no reason to include that property in the Sphere of Influence for DDS or CCWD.

At the December 15, 2008 Pittsburg City Council meeting, the Council voted to approve a resolution to enter into 36-month exclusive negotiating rights agreement with Discovery Builders for a potential swap of land which would allow Discovery to develop on protected open space near the Pittsburg Golf Course if they transfer land under their ownership in the Southwest Hills for preservation. No specific details identifying the exact area of the Southwest Hills that would be preserved have been determined. There is no reason to expand the spheres of the City of Pittsburg, CCWD, and DDS to include an area that may be preserved as part of the proposed swap.

The fact that the City of Pittsburg is currently considering a variety proposed land use changes in the Southwest Hills and Thomas Ranch areas makes the expansion of the SOIs premature. In accordance with the Contra Costa LAFCO Commissioner Handbook, these proposed land use changes should play a significant role in any determination for SOI expansions.

Any decision about whether to approve or deny the expansion of the SOI for the City of Pittsburg, DDS, or CCWD to include the Southwest Hills and Thomas Ranch at this point in time would be premature and inadequate. It would be more prudent, and consistent with LAFCO policies, to wait until land use decisions have been made and specific projects have been proposed and been subject to appropriate CEQA analysis before any SOI expansions are considered.

### ***Need for Services***

In their charge to encourage "planned, well-ordered, efficient urban development patterns" and to dissuade urban sprawl, LAFCO policies discourage the expansion of SOIs to areas that are not in need of the services provided by the agency seeking to expand its sphere. "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." (Contra Costa County LAFCO

Commissioner Handbook, Section 2.1 Policies and Standards, Part D Policy on Spheres of Influence and Annexations.)

Save Mount Diablo has major doubts that the Southwest Hills and the Thomas Ranch areas will be approved for development and in need of the services provided by the City of Pittsburg, DDSD, and CCWD within the next 5-10 years. If recent trends in the housing market continue, or even only marginally improve, the expansion of residential development into these areas does not seem likely to occur. In fact, in 2008 the City of Pittsburg suspended the process of creating the Hillside Development Standards because the City's financial hardships caused hesitation to pay for the related environmental documents. What reason is there to believe that this trend will not continue and development, especially sprawl development, will not be stymied for at least the next 5-10 years?

Furthermore, state, regional, and local planning goals and policies have transformed over the past few years as we become increasingly aware of the impacts of green-house gasses. Assembly Bill 32 and Senate Bill 375 encourage a decrease of green-house gas emissions through the promotion of transit-oriented, infill development and the discouragement of the type of sprawl development that would be planned for the areas proposed for SOI expansion. Regulations directing planning and development away from sprawl development are likely to become stronger over the next 5-10 years.

Considering the land use planning issues that are discussed above, it appears that not all of the land within the SOI expansion areas would be proposed for development. Dominant ridgelines within the Southwest Hills as well as the area which may be preserved as part of the land swap with Discovery Builders would not be in need of any services in the next 5-10 years or any time in the future. The City of Pittsburg is considering re-zoning the Thomas Ranch to Open Space. With an Open Space designation, it is not likely that this area will be in need of City of Pittsburg, DDSD, and CCWD services in the next 5-10 years either.

Given these trends in the housing market and planning policies to address green-house gasses, in addition to the land use planning processes being considered by the City of Pittsburg, Save Mount Diablo does not believe that it can be definitively demonstrated that SOI Area A and SOI Area D are in need of these services within the next 5-10 years.

### ***Precedent Setting***

Throughout the numerous LAFCO meetings concerning the SOI expansions, some of the Commissioners asserted that it is the duty of the Commission to make planning lines contiguous and that the SOIs should be expanded to the voter approved Urban Limit Line because it was the will of the public. Save Mount Diablo disagrees with this assertion and believes it sets a dangerous precedent for land use planning in Contra Costa County.

According to the Commissioners Handbook:

LAFCOs are charged with establishing policies and exercising their powers "...in a manner that encourages and provides planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space lands within those patterns" and with "...the discouragement of urban sprawl and the encouragement of the orderly formation and development of local agencies based upon local conditions and circumstances."

If LAFCO Commissioners vote to approve the SOI expansion based on the presumption that all SOIs should be contiguous with the Urban Limit Line, they are not fulfilling their duty as

described in the handbook. Each proposed SOI expansion is meant to receive an extensive level of consideration and review which take a variety of factors into account.

By approving the expansion of the SOIs for the City of Pittsburg, DDS, and CCWD simply because the lines should be contiguous, LAFCO would tacitly be adopting a policy which has the potential to substantially limit their discretionary abilities. A precedent would be set which would dictate that the SOI for all agencies throughout Contra Costa County should be coterminous with the Urban Limit Line. Such a precedent would essentially turn LAFCO into a rubber stamp authority with little ability to consider the broad range of factors encouraged by the Commissioners Handbook.

Save Mount Diablo believes that rather than approving the sphere expansion in order to make it coterminous with the ULL, LAFCO should consider the proposed land uses in the territory designated to be included in the SOI and the impacts the expansions would have on open space and natural resources.

### **CEQA**

According to the Initial Study, "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 on which this review tiers." (City of Pittsburg, DDS, and CCWD SOI Expansion Initial Study, Page 25) The Initial Study goes on to assert that "all future proposed projects in the SOI areas, including annexation, are subject to CEQA review." (SOI Expansion Initial Study, Page 25)

Save Mount Diablo believes that the Initial Study's conclusion that a Negative Declaration is the appropriate level of CEQA review is incorrect. The Initial Study makes the determination that the SOI expansions for the City of Pittsburg, DDS, and CCWD would not have any significant impacts based on two erroneous assertions.

First, the Initial Study claims that the potential impacts of the SOI expansions have already been analyzed and mitigated in the Pittsburg General Plan EIR. As a result, no new EIR is necessary and the Negative Declaration can tier off of the General Plan EIR.

Save Mount Diablo disagrees with the conclusions of the Initial Study and believes that tiering does not provide an appropriate level of analysis for the SOI expansions. Pittsburg General Plan policies which directly address the areas to be covered by the SOI expansions have not yet been implemented. As a result, impacts of the General Plan have not been fully mitigated and tiering is not a viable option.

Second, the Initial Study defers environmental review for development within the SOI areas to a future date when additional projects are proposed. Again, this is an inappropriate level of analysis for CEQA which requires that a project's potential growth inducing impacts be fully considered and that a project must be analyzed at its earliest possible stage. The SOI expansions would be the first step in any project that would subsequently be proposed in the areas covered by the expansion. Full CEQA review should occur at the SOI expansion stage.

### ***Tiering off of the Pittsburg General Plan EIR***

Invoking the tiering principle encouraged by CEQA, the Initial Study makes the following claim concerning the SOI expansions for the City of Pittsburg, DDS, and CCWD:

The proposed project is not expected to cause, directly or indirectly, any foreseeable development activity that could result in significant environmental effects beyond what was analyzed in other programmatic environmental documents. For this reason, an EIR is not recommended or warranted, and a Negative Declaration supported by this Initial Study should serve as an adequate level of environmental review. (SOI Expansion Initial Study, Page 36)

A Program EIR is an EIR prepared on a series of actions that can be characterized as one large project. A program EIR generally establishes a framework for tiered or project-level environmental documents that are prepared in accordance with the overall program (See CEQA Guidelines Section 15168(a)).

A tiered Negative Declaration evaluates a specific project or later development action that has already been covered by a certified Program EIR. General information from the Program EIR is summarized or incorporated by reference so that the tiered Negative Declaration can focus on project specific issues. A Tiered Negative Declaration is used where there is no substantial evidence that the project may have a significant impact not previously analyzed and mitigated.

However, according to CEQA Article 10, Section 15152 (f): "A later EIR shall be required when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR." Section 15152 (f) goes on to say that "Significant environmental effects have been 'adequately addressed' if the lead agency determines that they have been mitigated or avoided as a result of the prior environmental impacts report and findings adopted in connection with that prior environmental impacts report."

The City of Pittsburg General Plan EIR is a program EIR which includes detailed discussion about the type of development that is planned for the Southwest Hills. However, a Tiered Negative Declaration is not appropriate for this project because the General Plan has a number of impacts that have not yet been fully mitigated.

According to the General Plan EIR, "the General Plan's policies are designed to avoid or minimize environmental impacts, the Plan itself is self-mitigating." (Pittsburg General Plan EIR, Executive Summary 1-5) Unfortunately, a number of the General Plan policies meant to be implemented to serve as mitigations have not yet been executed. Some of these policies apply specifically to development in the hills in southern and southwestern Pittsburg which would be included in the SOI expansions. Because these policies and standards have not been implemented, the impacts of the General Plan have not been mitigated and the General Plan EIR cannot be used for tiering.

As was mentioned above, the City of Pittsburg initiated a process to implement the goals and policies of the General Plan relating to hillside development, but the process was never completed. "The (City) Council adopted a work program in February 2004 to create new hillside development implementation guidelines and performance standards, to implement the applicable General Plan goals and policies related to future development in the southern foothills." (January 15, 2008 Planning Commission Resolution)

The General Plan Standards identified in the proposed ordinance included:

- 4-P-8 "Update the Hillside Planned Development District within the City's Zoning Ordinance to reflect the hillside development standards and policies set forth within this General Plan;"

- 4-P-4 "Develop and implement a 'Design Review Checklist' for all new hillside development, to ensure that conservation and site layout policies within the General Plan are considered;" and
- 2-P-22 "Revise the City's Hillside Preservation Ordinance to reflect General Plan policy direction".
- 2-P-23 "Ensure that all General Plan policies apply to hillside land irrespective of zoning – whether Planned Development or any other base district."

According to the staff report for a Planning Commission meeting considering the proposed ordinance, "upon adoption of the General Plan, the City adopted mitigation measures, including many reflected in the proposed project." Now, "the proposed hillside regulations will bring the City even closer to meeting its ultimate goal of implementing the General Plan (in its entirety)." (January 15, 2008 Pittsburg Planning Commission Resolution)

However, at the May 15, 2008 Pittsburg City Council Meeting the Council voted unanimously "to suspend work on amendments to PMC Title 18 to establish new hillside development regulations and amend the existing HPD (Hillside Planned Development) District regulations because of the associated general fund costs relating to the development of an EIR and potential associated legal ramifications." (May 15, 2008 Pittsburg City Council Meeting Staff Report)

With the suspension of work on the Hillside Development Standards, the City of Pittsburg has not yet implemented the General Plan goals and policies which reflect the mitigation measures for the impacts to the southern and southwest hills. As a result, the General Plan EIR is not an adequate CEQA document for the SOI expansions to use for tiering.

The General Plan includes a variety of other goals and policies which emphasize the protection of the natural resources, views, and sensitive slopes associated with the hillsides and directs implementation to address these issues.

- 2-G-1 Maintain a compact urban form within the City's projected municipal boundary. Ensure that hillside lands not environmentally suitable for development are maintained as open space.
- 2-G-8 Ensure that hillside development enhances the built environment, improves safety through slope stabilization, is respectful of topography and other natural constraints, and preserves ridgelines and viewsheds.
- 2-P-2 Update the City's Zoning Ordinance and Subdivision Regulations for consistency with the General Plan, including the General Plan Diagram.  
  
This revision would include:
  - Revamping regulations to ensure well-designed hillside development.
- 2-P-3 Allow market forces, the status of agricultural preserve (Williamson Act) contracts, and the availability of urban services to determine the timing of annexation or development expansion into hillsides.
- 2-P-21 Revise the City's Hillside Preservation Ordinance to reflect General Plan policy direction. Revisions may include, but are not limited to:
  - Designating protected ridgelines, creeks, and other significant resource areas, along with daylight plane or setbacks standards;
  - Defining protected viewsheds;

- Designating location and density of low-density hillside residential development based on slope stability and visual impact;
- Provision of well-designed hillside projects that provide larger, family oriented lots; and
- Protection of significant ridgelines and incorporation of hill forms into projects design.

These General Plan goals and policies provide further mitigation of the impacts of the General Plan. In addition to those listed above, consideration should be given to the fact that the lack of implementation of these policies means that the General Plan has not been fully mitigated. CEQA clearly states that if a project has not been sufficiently mitigated then tiering is not an option and another EIR needs to be prepared for the project.

***Low Threshold - Legal Precedent in Support of the Preparation of an EIR***

***Substantial Evidence of Significant Impacts***

“[I]f substantial evidence in the record supports a 'fair argument' significant impacts or effects may occur, an EIR is required and a negative declaration cannot be certified.” *Stanislaus Audubon v. County of Stanislaus* 33 Cal.App.4<sup>th</sup> 144, 150-151 (1995). Even if other substantial evidence supports the opposite conclusion, the agency nevertheless must prepare an EIR. *Id.*; *Quail Botanical Gardens v. City of Encinitas* 29 Cal.App.4<sup>th</sup> 1597 (1994). The “fair argument” standard creates a “low threshold” favoring environmental review through the EIR process, which is considered the “heart” of the CEQA system. *Sundstrom v. County of Mendocino*, 202 Cal.App.3d 296 (1988), citing *No Oil, Inc. v. City of Los Angeles*, 13 Cal.3d 68, 84, 118 Cal.Rptr. 34, 529 P.2d 66 (1974).

"A 'significant effect on the environment' is defined as 'a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.'" *Stanislaus Audubon*, 202 Cal.App.3d 296 (citing *Oro Fino Gold Mining Corp. v. County of El Dorado*, (1990) 225 Cal.App.3d 872, 881, 274 Cal.Rptr. 720).

In this case, SOI expansion would be the first step in opening the 620.15-acre Southwest Hills area and 697.47-acre Thomas Ranch area for development. The potential development of these areas will have significant and long-reaching impacts on the environment. Full environmental review should not be deferred to future proposed projects.

***Good Faith Duty to Investigate and Forecast Future Growth***

A lead agency has a duty to investigate and make a good faith effort to identify all environmental impacts. “Drafting an EIR or preparing a Negative Declaration necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.” CEQA Guidelines, § 15144. Further, CEQA mandates that “[a]ll phases of project planning, implementation, and operation must be considered in the Initial Study of the project.” Guidelines, § 15063(a)(1), (emphasis added).

A lead agency’s avoidance of discussion of foreseeable future impacts is not permissible. Indeed, “[t]he agency [will] not be allowed to hide behind its own failure to gather relevant data. . . . CEQA places the burden of environmental investigation on government rather than the public.” *Gentry v. City of Murrieta* (1995) 36 Cal.App.4<sup>th</sup> 1359, at 1378-1379 (citing *Sundstrom*, 202 Cal.App.3d 296, 311).

Finally, "the fact that future development may take several forms, or that it may never occur does not excuse environmental review of the project which is the catalyst for the projected future

growth.” *City of Antioch v. City Council*, 187 Cal.App.3d 1325, 232 Cal.Rptr. 507(1986) (citations omitted). In *Antioch*, the respondents argued that the preparation of an EIR was not necessary because their road and sewer construction project involved no building construction and it was not known what type of development would occur. The court rejected this argument.

The initial study disregards the fact that the Project is the first step in what will be a clear and profound catalyst for growth in Pittsburg’s southern hills. As a result, the document concludes that a Negative Declaration provides an adequate amount of review and that “all future proposed projects in the SOI areas, including annexation, are subject to CEQA review.” (SOI Expansion Initial Study, Page 25)

Now is the appropriate time to fully consider these issues and to develop a thoughtful plan to balance and mitigate development and subsequent environmental impacts. “By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process.” *Sundstrom*, 202 Cal.App.3d 296 (citing Pub.Resources Code sec. 21003.1(a)). Further, “the Supreme Court approved the principle that the environmental impact should be assessed as early as possible in government planning. Environmental problems should be considered at a point in the planning process where genuine flexibility remains. *Id.* (citations omitted).

Approval of this project will have significant growth inducing impacts on the Southwest Hills and Thomas Ranch areas by removing a barrier to growth. Future development of these areas would not be possible without the City’s approval of this Project. It is more appropriate to study potential impacts of development in the area now rather than putting off such analysis to annexation or specific development projects.

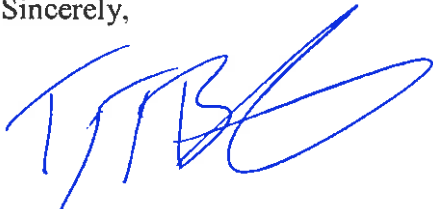
### **Conclusion**

The proposed SOI expansion for the City of Pittsburg, DDS and CCWD into Pittsburg’s Southwest Hills and Thomas Ranch areas is inappropriate at this time and is in conflict with a number of LAFCO policies. LAFCO should retain the existing SOIs for these agencies until a specific project has been proposed, undergone appropriate CEQA analysis, and approved.

If LAFCO decides to move forward, they should prepare an EIR to evaluate the projects impacts. An EIR is the appropriate course of action for a lead agency to pursue when substantial evidence in the record supports a “fair argument” that a significant impact may occur. In this case, the Project is the catalyst for future development which will cause numerous impacts. Accordingly, Save Mount Diablo urges the City to fulfill its responsibilities as the CEQA lead agency and prepare and circulate an EIR for the Project at this time.

Thank you for your consideration of our comments.

Sincerely,



Troy Bristol  
Land Conservation Associate  
Save Mount Diablo