



December 28, 2020

Hon. Members of the Policy and Procedures Committee
of the Mendocino County Local Agency Formation Commission

c/o Uma Hinman
Executive Officer
Mendocino LAFCo
200 South School Street, Suite F
Ukiah, CA 95482
Sent via email: eo@mendolafco.org

Subject: Written Comments regarding the Mendocino LAFCo Revised Proposed SOI Policies

Dear Mr. Chair, Committee Members, and Ms. Hinman,

We hope this finds you well.

Very recently, the Policy and Procedures Committee (the "Committee") has taken steps to revise certain Mendocino LAFCo policies relating to Spheres of Influence (the "Proposed SOI Policies") as those policies are currently codified in its Policies and Procedures Manual. We representatives of the Cities of Fort Bragg and Ukiah jointly express our concerns about the impact these policies will have on LAFCo's ability to plan for the orderly development of unincorporated areas surrounding our cities, and why we think the Committee should take more time to consult with affected jurisdictions and consider the impacts of the Proposed SOI Policies before submitting them to the full LAFCo Board for consideration and adoption.

The Cities of Fort Bragg, Ukiah, and Willits Have Proactively Engaged with LAFCo and Have Already Provided Written and/or Verbal Comments on The Proposed SOI Polices which Have Not been Responded To

On November 24, 2020, the City of Ukiah and the City of Willits provided written comments, summarizing their concerns about the Proposed SOI Policies. Those letters are attached. Though the Committee directed staff to afterward work with the cities, when the respective parties met, LAFCo staff provided limited feedback to the submitted questions and concerns. We urge the LAFCo Policies and Procedures Committee to consider these original concerns further than we believe they have been considered in our meetings with LAFCo staff.

The Process and Timing of the Proposed SOI Policies Have Not Provided Sufficient Opportunity to Consider Alternatives that would Promote LAFCo's Mission and Avoid Unnecessary Adverse Impacts on the Cities.

The Committee first entertained the Proposed SOI Policies during a meeting it held the week of Thanksgiving. We understand that the next Committee meeting is scheduled for December 28th, the Monday after the Christmas holiday. The choices of Committee meeting dates have forced the cities to react quickly and have significantly hampered our ability to ensure we fully understand the document and communicate to you the basis of our reservations. Therefore, our observations and reservations in this letter likely do not reflect all the concerns we would have had we more time to understand the Proposed Policies. The timing has also precluded our ability to provide alternative language that may be acceptable to all parties.

We Disagree that the Proposed Policies Will Promote Orderly Development. On the Contrary, the Cities' Believe that the Proposed Policies Will Needlessly Delay LAFCo's Ability to Act on Reorganization Applications and May Prevent Worthwhile Reorganizations by Making the Cost of SOI Reviews and Updates Prohibitively Expensive.

From past discussions with LAFCo staff, the Cities understand that the Proposed SOI Policies are intended to ensure that SOIs in Mendocino County comply with statutory requirements and are subject to timely review and updates before LAFCo entertains applications for annexations and detachments. The Proposed SOI Policies are also apparently intended to ensure the environmental impacts of SOI revisions are adequately considered in compliance with the California Environmental Quality Act ("CEQA"). We support this intent; however, the draft policies seek to do this by disregarding existing SOIs and mandating costly environmental reviews with the affected local government paying those costs in every case. As is explained in more detail below, the CKH Act does not authorize LAFCo to disregard existing SOIs; and CEQA contemplates individualized determinations, including the application of categorical exemptions.

The Proposed SOI Policies Contravene the Stated Purposes of LAFCos Generally and Mendocino LAFCo's Own Mission Statement

The Proposed SOI Policies suffer from a number of policy and legal defects. As the Proposed SOI Policies acknowledge, the duty to maintain updated Spheres of Influence is LAFCo's. However, an effect of the Proposed SOI Policy is that LAFCo will refuse to entertain proposals that are not consistent with current Spheres of Influence, when any so-called "outdatedness" is due to LAFCo's failure to update Spheres of Influence "as necessary." It would therefore impose the consequences of potential nonfeasance on agencies which have no control over LAFCo's performance of its obligations. This is unjust and is untenable policy.

Mendocino LAFCo exists in part to "encourage orderly growth and development which are essential to the social, fiscal, and economic well-being of the state." The Proposed SOI Policies would make the boundaries of an SOI coterminous with an entity's political boundary, unless the entity agrees to assume the cost of an environmental review utilizing in every case the proposed SOI outside the entity's boundaries as the baseline for environmental review. However, in many, if not most, cases, the SOIs for the affected local governments (cities and special districts) do not assure that any reorganizations will occur. Spheres of Influence are merely planning tools, and no environmental changes will occur unless application is made to annex parcels within the SOI. Changes in the allowed

uses of parcels or the extension of public services, such as water or sewer service, may not occur at all or only as a result of an annexation.

How this encourages orderly growth and development is difficult to understand. Rather, the effect of the Proposed SOI Policies appears to work directly against LAFCo's stated Legislative purpose by circumventing the role SOIs play in anticipating and planning for where growth in Mendocino County should and should not occur.

Rather than advancing the stated mission of Mendocino LAFCo, the Proposed SOI Policies undermine LAFCo's ability to accomplish that mission. In direct contravention to your mission statement, the likely results of the Proposed SOI Policies include:

- failing to consider the present and future needs of a community;
- encouraging *disorderly* growth and development in incorporated areas of the County, aggravating already-existing urban sprawl and the deterioration of agricultural and open space resources; and
- preventing the efficient provision of municipal services.

For these reasons, we urge the LAFCo Policies and Procedures Committee to seriously consider these likely consequences and set aside the Proposed SOI Policies. Instead, we urge you to work collaboratively with us to develop Policies that are in line with Legislative purpose and your own mission.

The Proposed SOI Policies Exceed LAFCo's Statutory Authority

The Proposed SOI Policies suffer from legal defects as well. While these defects are articulated more clearly in the attached letters, they generally amount to an attempt to exceed the statutory authority granted to LAFCo through the Cortese-Knox-Hertzberg Act. These defects include:

- **The Proposed SOI Policies violate Government Code sections 56427 and 56428**, which require that Spheres of Influence be adopted, amended, or revised only after certain processes have been followed.
- **The Proposed SOI Policies violate Government Code section 56425 (g)**, which requires LAFCo to update Spheres of Influence "as necessary" and precludes imposing arbitrary time limits.
- **The Proposed SOI Policies violate Government Code section 56375 (d)**, which requires that any definitions adopted by LAFCo must not conflict with the Cortese-Knox-Hertzberg Act.
- **The Proposed SOI Policies violate Government Code section 56425 (a), (e), (h), and (i)**, which articulate the standards LAFCo must apply to sphere determinations. Restricting a local government to its existing political boundaries unless it agrees to pay all costs associated with an SOI that extends beyond those boundaries violates these sections. At a minimum it could prevent the extension of public services in the most efficient manner. It leaves no room for LAFCo to pursue such planning, if a city or special district lacks the financial resources to pay more than the annual fees imposed by LAFCO.

The Proposed SOI Policies Violate CEQA

The Proposed SOI Policies also violate the California Environmental Quality Act by attempting to craft local guidelines that conflict with the Public Resources Code, the state CEQA Guidelines, and the well-developed body of CEQA case law. These defects include:

- **The Proposed SOI Policies violate CEQA** because not all SOI determinations are CEQA “projects” subject to environmental review.
- **The Proposed SOI Policies conflict with CEQA** because LAFCo is not always the Lead Agency for SOI determinations – or need not be based on consultation with the affected local government.
- **The Proposed SOI Policies conflict with CEQA’s** established principles concerning baseline environmental conditions by attempting to dispense with the agency’s obligation to make a case by case determination of the baseline conditions based on the facts and circumstances presented and supported by substantial evidence – of which there is none.
- **LAFCo staff’s summary of the Proposed SOI Polices misstate and conflict with CEQA**, which requires public agencies to make project-specific findings of fact supported by substantial evidence in the record – of which there is none.

To recapitulate, we have numerous and significant concerns about the Proposed SOI Polices. We believe the process and timing of these Proposed SOI Policies prevent adequate consultation with our affected cities and other interested parties and preclude more thoughtful consideration of the Proposed SOI Policies’ impacts. We believe the Proposed SOI Policies are inconsistent with both stated Legislative purpose and your own policies and mission. Finally, the Proposed SOI Policies violate the Cortese-Knox-Hertzberg Act and the California Environmental Quality Act.

We urge you to set the Proposed SOI Polices aside. We look forward to more constructive and collaborative dialogue in the future.

Thank you for your time and your consideration.

Yours Sincerely,



Tabatha Miller
City Manager
City of Fort Bragg



Sage Sangiacomo
City Manager
City of Ukiah



**111 E. COMMERCIAL STREET
WILLITS, CALIFORNIA 95490
(707) 459-4601 TEL
(707) 459-1562 FAX**

November 24, 2020

Mendocino County Local Agency Formation Commission
Policies and Procedures Committee
c/o Uma Hinman, Executive Office
200 School Street
Ukiah, CA 95482

Re: November 24, 2020 LAFCO Policies & Procedures Meeting
Agenda Item 2b – City of Willits Comments

Dear Members of the Mendocino LAFCO Policies and Procedures Committee,

The City of Willits respectfully requests additional time to review and comment on the proposed policy change revisions being considered under Agenda Item 2b, Policy Development for Spheres of Influence.

The City would like additional time to allow for the opportunity to meet with LAFCO staff and the other jurisdictions to obtain clarification on the intent of the language and possibly provide suggested language that would prevent any unintended consequences.

For instance, City staff is unclear as to whether the Cities will incur additional charges from LAFCO for the periodic review of our Sphere of Influence (SOI). As a function of its duties and responsibilities given by the Cortese-Knox-Hertzberg Act, LAFCO is required to periodically review and update spheres of influence. Government Code Section 56425 requires the Commission to review and update, as necessary, all spheres of influence for cities and special districts at least once every five years.

Staff is unsure whether the costs associated with the standard SOI review will be included in the annual LAFCO budget and work plan or whether those costs will be removed from the annual budget and converted to a cost recovery fee.

Also, LAFCO's role under the California Environmental Quality Act (CEQA) is typically one of a responsible agency, which means that it does not take the lead in preparing the environmental document for the proposed action. When another public agency, such as the City of Willits, acts as a lead agency and submits a negative declaration or a final environmental impact report certified by resolution as having been completed in accordance with CEQA with an application for approval of a project by the Mendocino LAFCO, such negative declaration or final environmental impact report shall be submitted to the LAFCO. The City is neither aware that Mendocino LAFCO would be required to complete any further environmental review, nor is the

City aware of a requirement to pay additional fees unless Section 15052 of the CEQA Guidelines would require LAFCO to act as the Lead Agency for a project.

The City is unclear as to whether the proposed policy language is consistent with the statement provided above. This is of particular interest to the City of Willits, as the City has secured State funding and is in the process of developing a Sphere of Influence Amendment, including CEQA review, for submission to LAFCO for the purpose of creating a substantial level of new opportunities to construct a variety of housing types. Staff will be working with LAFCO staff as we move forward through the process of completing our SOI amendment application. The City is unsure as to whether the proposed language would introduce new fees to our prospective project.

Thank you for your consideration of the City's request to continue this item and allow for adequate time to analyze the proposed revisions and further speak with LAFCO staff.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dusty Duley", with a long horizontal flourish extending to the right.

Dusty Duley
Community Development Director

cc: Stephanie Garrabrant-Sierra, City Manager
H. James Lance, City Attorney



November 24, 2020

Mendocino County Local Agency Formation Commission
Policies & Procedures Committee
C/O Uma Hinman, Executive Officer
Ukiah Valley Conference Center
200 S School St
Ukiah, CA 95482
VIA EMAIL: eo@mendolafco.org

Re: November 24, 2020 Local Agency Formation Commission Policies & Procedures Meeting
Agenda Item 2b., Policy Development for Spheres of Influence – City of Ukiah comments

Honorable Members of the Policies & Procedures Committee:

The City of Ukiah respectfully submits the following comments for consideration regarding the
aforementioned agenda item, Item 2b., Policy Development for Spheres of Influence.

Affected agencies, including the City of Ukiah, have not been given adequate time to evaluate and respond to the proposed policies under consideration by the LAFCo Policies & Procedures Committee. The City requests a postponement of this agenda item to allow the City and other affected agencies the opportunity to analyze the proposed policy revisions and engage with LAFCo staff.

The City was first provided a copy of the proposed policy revisions on Saturday, November 21, 2020. From City staff's initial review, the proposed revisions may have significant impacts on the ability of incorporated cities to complete Spheres of Influence (SOI) updates. Such sweeping changes to policy, especially during a pandemic where traditional communication modes are hindered, should be done collaboratively with affected multi-service agencies such as the City of Ukiah, City of Fort Bragg, City of Willits, and City of Point Arena- and with as much advance notice as possible.

In the limited time available, the City of Ukiah submits the following preliminary comments on LAFCo staff's proposed policy revisions.

A. City of Ukiah Preliminary Comments Regarding Policies Recommended by LAFCo Staff to Govern the Application of CEQA to Sphere of Influence Determinations by LAFCo

1. Lead Agency/Responsible Agency duties

Whether LAFCo functions as the lead or responsible agency for a proposed action is determined by the CEQA statutes and Guidelines. LAFCo often may be, but is not always, the lead agency for Sphere of Influence determinations, particularly if they are combined with annexation. (CEQA Guidelines, Sections 15150 – 15053.)



2. Baseline determinations

The environmental setting or CEQA baseline is represented by the existing physical conditions of the environment in the vicinity of the project and the scope of planning decisions already made and analyzed under CEQA. Baseline determinations are not governed by jurisdictional boundaries. (CEQA Guidelines, Section 15125; *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439.)

3. Potential categorical exemptions

CEQA applies only to some Sphere of Influence amendments. Most often, a categorical exemption applies under CEQA Guidelines, Sections 15378(B)(5) [the “common sense” exception]; Class 19 (annexation of existing facilities), Class 20 (LAFCo approvals which do not change the area in which powers exercised – i.e., the actor changes, but not the act); *City of Agoura Hills v. LAFCo* (1988)- 198 CA3d 480 held a Sphere of Influence change not associated with a development project was not a project subject to CEQA.

4. Impact analysis/growth inducement

Whether providing water or wastewater services actually is growth-inducing is a fact-based inquiry that depends on the circumstances, especially as to whether providing services involves expansion of infrastructure systems beyond those existing or already planned and analyzed. The complexity and associated cost of reviewing such changes also depends on the circumstances. CEQA makes none of the factual assumptions or legal presumptions of impact, complexity, or cost asserted in the LAFCo staff report. (CEQA Guidelines section 15126.2(d).)

B. City of Ukiah Preliminary Comments on the Policy Regarding “Outdated Spheres of Influence”

1. The definition of an “outdated SOI” is so vague as to be purely subjective.
2. Section 10.1.3(a) of policy proposed by LAFCo staff admits that the Cortese-Knox-Hertzberg Act makes it LAFCo’s responsibility to maintain current SOIs.
3. LAFCo staff has no power to refuse an application because LAFCo has failed to maintain what it subjectively believes to be a current Sphere of Influence and Municipal Service Review (MSR). While LAFCo might be able to reject an annexation application for want of sufficient current data, LAFCo Commissioners must make that decision in publicly noticed hearings on the basis of facts in the record.
4. Paragraph (f) in the proposed policy, which states that LAFCo can impose a coterminous SOI if an agency does not pay the costs to update an SOI, violates Cortese-Knox-Hertzberg. The statute does not authorize LAFCo to refuse to exercise its discretion for fiscal reasons.
5. Although LAFCo likely can require a “current MSR” for an SOI amendment, what amounts to a current MSR is subjective, and maintaining current MSRs is LAFCo’s responsibility, not an



applicant's. LAFCo cannot use its failure to maintain current documents to justify refusing applications. Rather, if such action is supported by facts in the record before the Commission, it could reject a specific application on its merits.

City staff looks forward to engaging with LAFCo staff on the proposed revisions in the near future, after having adequate time to more thoroughly analyze and research the proposed policies and potential alternatives.

Sincerely,

A handwritten signature in blue ink that reads "Craig Schlatter". The signature is fluid and cursive, with the first name being more prominent.

Craig Schlatter
Director of Community Development

CC: Sage Sangiacomo, City Manager
David Rapport, City Attorney
Phil Williams, Special Counsel

420 Sierra College Drive, Suite 140
Grass Valley, CA 95945-5091
Main: (530) 432-7357
Fax: (530) 432-7356

COLANTUONO
HIGHSMITH
WHATLEY, PC

Michael G. Colantuono
(530) 432-7359
MColantuono@chwlaw.us

MEMORANDUM

TO: Policies & Procedures Committee FILE NO: 51001.0002
Mendocino Local Agency Formation
Commission

FROM: Michael G. Colantuono, Esq. DATE: December 18, 2020

C: David J. Rapport, Ukiah City Attorney
Philip A. Williams, Special Counsel
City of Ukiah

RE: Proposed Policy of Mendocino LAFCO Regarding Spheres of Influence

INTRODUCTION AND SUMMARY OF CONCLUSION. We write to express our opinion regarding the Commission’s Revised Proposed SOI Policies circulated for comment on December 2, 2020. For the reasons stated below, we conclude the policies exceed LAFCO’s statutory authority and would be set aside if challenged in court.

Most fundamentally, the policies amount to a refusal to entertain proposals for amendments to spheres of influence, or reorganization proposals that require such amendments, if LAFCO determines — under a poorly defined standard — that it has not maintained a current spheres for the agencies affected by a proposal. While LAFCO has broad discretion to approve, deny, or conditionally approval proposals, it may not simply refuse to entertain them. Nor may its staff. The Executive Officer may recommend denial, but she cannot withhold a proposal from the Commission’s agenda.

DISCUSSION. More detailed comments follow:

1. **The fundamental policy violates Cortese-Knox-Hertzberg (CKH).** Section 9.12.2 states the policy criticized above. It violates Government Code sections 56427 and 56428. Section 56427 states: “The commission **shall** adopt, amend, or revise spheres of influence after a public hearing called and help for that purpose.” (All emphasis in this memo is added.) Section 56428(a) states: “Any person or local agency may file a written request with

the executive office requesting amendments to a sphere of influence” Section 56428(b) provides: “After comply with [CEQA], the executive officer **shall** place the request on the agenda for the next meeting of the commission for which notice can be given.” Section 56428(c) states: “The executive officer **shall** review **each requested amendment** and prepare a report and recommendation.” Section 56428(d) states: “At its meeting, the commission **shall** consider the request and receive any oral or written testimony.”

Moreover, as the policy acknowledges (in § 10.1.3(a)), the duty to maintain updated spheres of influence is LAFCO’s. (Gov. Code § 56425(a) & (g).)

Thus, the policy amounts to a statement that LAFCO will refuse to entertain proposals that are not consistent with current spheres of influence, depriving local agencies of rights conferred by the statute when LAFCO has not maintained current spheres. The law will not allow this.

2. **The 10-year SOI time limit is impermissible.** Section 10.1(d): The 10-year limit on the life of some spheres of influence is arbitrary. LAFCO has discretion to determine to maintain or update a sphere, but CKH’s standard controls. Government Code section 56425(g) requires LAFCO to update spheres “as necessary.” This is a factually specific determination turning on the conditions affecting each local agency, the services it provides, and the community it serves.
3. **The distinction of “municipal” and other agencies is unlawful.** Section 10.1.3(b). The distinction of so-called “municipal” and other agencies is arbitrary. Why does responsibility to provide roads (i.e., to be a city) suggest greater need for timely sphere updates as opposed to such other growth-inducing services such as emergency medical services, parks, lighting, and pest control? The policy does not explain. Moreover, while LAFCO has discretion to adopt policies and to define terms CKH does not, those definitions must be consistent with the statute. (Gov. Code, § 56375(d).)
4. **Why are cities treated more harshly than other agencies?** Section 10.1.3(c) makes the adverse treatment of cities transparent, referring to them by that

name. The policy does not explain why cities are treated differently than other agencies that provide growth-inducing services.

5. **CEQA does not allow LAFCO to assign lead agency status as the policy does.**
Section 10.1.3(e): The policy seems to preclude a city from being the CEQA lead agency for a general plan update that also includes a sphere update and an annexation. Given that the policy suggests sphere updates should be coordinated with general plan updates when feasible, this seems like poor policy. In any event, CEQA does not permit it. (14 Code Cal. Regs., § 15051(c) [lead agency is typically first to take discretionary action on project].)
6. **LAFCO cannot impose a coterminous sphere for non-payment of fees.**
Section 10.1.3(g): LAFCO may not impose a coterminous sphere on an agency to enforce LAFCO's fees. The statute articulates the standards LAFCO must apply to sphere determinations. (Gov. Code, § 56425(a), (e), (h), (i). Enforcing LAFCO's fees is not among them.)
7. **The policy provides no standard for what is a "current" or "adequate" MSR.**
Section 10.1.3(h): The policy states no standard as to when a municipal services review is "adequate." Moreover, the duty to adopt and maintain MSRs is LAFCO's, too. (Gov. Code, § 56430.) This also amounts to the policy identified at the outset of this memo to refuse to process proposals on account of LAFCO's failure to maintain current MSRs and spheres.

CONCLUSION. For the reasons stated above, we conclude the proposed policy exceeds LAFCO's statutory authority and recommend that LAFCO not adopt it. LAFCO's goal to ensure reliable and current information to support its decisions is laudable and can be accomplish in cooperation with the County, the cities, and the special districts in the County — but not by this policy. The committee should recommend the Commission defer this policy until it can be rewritten consistently with law in collaboration with the local agencies the Commission exists to support.

MEMORANDUM

TO: Mendocino LAFCO Policies & Procedures Committee

FROM: Pioneer Law Group, LLP/Andrea A. Matarazzo

CC: Philip A. Williams, Special Counsel, City of Ukiah
David J. Rapport, City Attorney, City of Ukiah

DATE: December 11, 2020

RE: Mendocino LAFCO Policy Development for Spheres of Influence –
CEQA Issues

The City of Ukiah (“City”) requested our review of the proposed Sphere of Influence (“SOI”) policies of the Mendocino County Local Agency Formation Commission (“LAFCO”) regarding the proposal’s compliance and/or consistency with the requirements of the California Environmental Quality Act (“CEQA”) (Public Resources Code, § 21000 et seq.).

We reviewed the proposed SOI policies identified and discussed in Agenda Item No. 2b of the LAFCO Staff Report dated November 24, 2020, and conclude that the proposed policies impermissibly attempt to legislate blanket determinations that, under CEQA’s established rules, depend entirely on the facts and circumstances of the proposed activity under consideration.

The proposed policies violate CEQA by attempting to craft local guidelines that conflict with the Public Resources Code, the state CEQA Guidelines,¹ and the well-developed body of CEQA case law. Local agency policies must be consistent with, and within the scope of, state law. The proposed SOI policies violate this limitation on local agency authority to interpret CEQA. Procedures or policies that conflict with the statute or CEQA Guidelines are void. (Pub. Resources Code, § 21082; see *Apartment Association of Greater Los Angeles v. City of Los Angeles* (2001) 90 Cal.App.4th 1162, 1167, fn. 8.)

¹ / The state CEQA Guidelines are codified in title 14 of the California Code of Regulations.

Our specific concerns are summarized below.

I. **Not All SOI Determinations Are CEQA Projects, and Most Are Exempt.**

The overarching problem with LAFCO's approach to CEQA issues in the proposed SOI guidelines is they attempt to establish uniform policies regarding determinations that CEQA considers fact-based, project by project decisions, beginning with the threshold question of whether the proposed activity is subject to CEQA.

Although a broad standard is used to determine whether an activity is a CEQA "project" because it has the potential to result in a physical change in the environment, not every public agency activity meets the test. ((Pub. Resources Code, §§ 21065, 21080(a); CEQA Guidelines, §§ 15060(c); 15378; see, e.g., *City of Agoura Hills v. LAFCO* (1988) 198 Cal.App.3d 480, 494 [CEQA does not apply to adoption of a sphere of influence that is not necessarily the first step in development and would not necessarily result in a change in the physical environment].) As the Court of Appeal has explained:

The evaluation process contemplated by CEQA relates to the effect of proposed changes in the physical world which a public agency is about to either make, authorize or fund, not to every change of organization or personnel which may affect future determinations relating to the environment.

(*Simi Valley Recreation & Park District v. LAFCO* (1975) 51 Cal.App.3d 648, 666 [detachment of 10,000 acres from park district that would not change property's land use designations or result in development of property was not subject to CEQA].)

Adopting a sphere of influence can merely result in a change in potential political boundaries and therefore would not be subject to CEQA review, because if a proposed activity does not have the potential to cause a physical change in the environment directly or indirectly, it is not a project subject to CEQA. (Pub. Resources Code, § 21065; CEQA Guidelines, § § 15060(c)(2), (3), 15378(a); *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1186.)

Perhaps more importantly, even if all sphere actions were "projects" as a matter of law, most sphere amendments are categorically exempt from, and thus

not subject to, CEQA. (CEQA Guidelines, §§ 15378(B)(5) [“common sense” exemption]; 15319(a); 15320.)

LAFCO actions are expressly contemplated in two categorical exemptions from CEQA requirements:

- (1) Government reorganizations are exempt if they do not change the area in which previously existing powers were exercised, including establishment of a subsidiary district, consolidation of two districts, or merger of a district within a city into that city. (CEQA Guidelines, § 15320 [LAFCO approvals that do not change the area in which powers exercised – i.e., the actor changes, but not the act].)
- (2) Annexations of areas containing structures developed to the density allowed by current zoning are exempt as long as any utility services are designed to serve only the existing development. (CEQA Guidelines, § 15319(a) [annexation of existing facilities].)

A CEQA exemption also is provided for annexation of individual small parcels for construction of minimum-size facilities that are exempt from CEQA under CEQA Guidelines section 15303. (CEQA Guidelines, § 15319(b).)

II. Proposed Policies 10.1.3(d) and 10.1.3(e) Conflict with CEQA Because LAFCO Is Not Always the Lead Agency for SOI Determinations.

As drafted, proposed policies 10.1.3(d) and 10.1.3(e) incorrectly assume that LAFCO is the CEQA lead agency for all sphere actions. Whether LAFCO functions as the lead or responsible agency for a proposed action is a factual question determined by application of the criteria set forth in the statute and CEQA Guidelines. (Pub. Resources Code, § 21165; CEQA Guidelines, §§ 15051 - 15053.)

LAFCO often may be, but is not always, the lead agency for sphere of influence determinations, particularly if they are combined with annexation. (CEQA Guidelines, §§ 15150 – 15053.) When a LAFCO considers a public agency's application for a boundary change or other reorganization, the agency seeking the LAFCO action is normally the lead agency because it is the agency with general governmental authority over the area and because it took the first discretionary act in applying for the LAFCO action. (CEQA Guidelines, § 15051(b); *City of Redding v. Shasta County LAFCO* (1989) 209 Cal.App.3d

1169; *Resource Defense Fund v. LAFCO* (1987) 191 Cal.App.3d 886; *City of Santa Clara v. LAFCO* (1983) 139 Cal.App.3d 923.)

III. Proposed Policy 10.1.3(d) Conflicts with CEQA’s Established Principles Concerning Baseline Environmental Conditions.

Proposed policy 10.1.3(d) states that “[t]he baseline for CEQA review is the current jurisdictional boundary of an agency.” Under CEQA, however, the environmental setting or CEQA baseline is represented by the existing physical conditions of the environment in the vicinity of the project and the scope of planning decisions already made and analyzed under CEQA, not a line on a map. (CEQA Guidelines, § 15125(a); *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 448-453.)

Baseline determinations are factual and depend on the circumstances presented by each proposed action; they are not governed by jurisdictional boundaries. (*Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310, 327-328 [lead agencies have “discretion to decide, in the first instance, exactly how the existing physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence”] (italics added); *Neighbors for Smart Rail, supra*, 57 Cal.4th at pp. 449, 453, 457 [appropriate CEQA baseline depends on factual circumstances; the standard “involves a primarily factual assessment”].)

Moreover, when an agency is evaluating a proposed change to a plan or project that has been reviewed under CEQA, the agency must apply CEQA's standards limiting the scope of subsequent environmental review. (CEQA Guidelines, § 15162; *Abatti v. Imperial Irrigation District* (2012) 205 Cal.App.4th 650; *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 542; *Temecula Band of Luiseño Mission Indians v. Rancho California Water District* (1996) 43 Cal.App.4th 425, 437; *Benton v. Board of Supervisors* (1991) 226 Cal.App.3d 1467, 1477.) Under these standards, once an EIR has been certified or a negative declaration adopted for a project – such that evaluations of the impacts of the plan on the existing physical environment have been made – further CEQA review is limited. (Pub. Resources Code, § 21166; *Communities for a Better Environment, supra*, 48 Cal.App.4th 310, 326; *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 357-358.) These standards for subsequent environmental review apply whether or not the project has been constructed or the plan built out. (*Benton, supra*, 226 Cal.App.3d at p. 1476.) In effect, “the baseline for purposes of CEQA is adjusted

such that the originally approved project is assumed to exist.” (Remy, Thomas, Moose & Manley, Guide to CEQA, p. 207 (11th ed. 2007).)

Accordingly, when an agency is amending an existing plan that has already been reviewed under CEQA, the scope of CEQA analysis may be limited to the environmental impacts *of the amendment*. (Pub. Resources Code, § 21166; CEQA Guidelines, § 15162.) The agency is not required to reassess the environmental impacts of the entire, previously adopted plan. (See, e.g., *Black Property Owners Association v. City of Berkeley* (1994) 22 Cal.App.4th 974, 985 [city updated its general plan housing element as required by state law, including previously adopted rent control policies that continued in effect without change]; *San Franciscans for Livable Neighborhoods v. City & County of San Francisco* (2018) 26 Cal.App.5th 596, 620-622 [“[t]he relevant question is whether new significant environmental effects or a substantial increase in the severity of previously identified significant effects will result from a substantial change to the project. . . . Comparison to theoretical impacts is generally necessary to answer this question”].)

In short, proposed policy 10.1.3(d) conflicts with CEQA because it attempts to dispense with the agency’s obligation to make case by case baseline determinations based on the facts and circumstances presented and supported by substantial evidence.

IV. Staff’s Summary of Policies 10.1.3(d) and (e) Conflict With CEQA, Which Requires Public Agencies to Make Project-Specific Findings of Fact Supported by Substantial Evidence in the Record.

The staff report’s background summary states, “the baseline for CEQA review is the current jurisdictional boundary of an agency. Therefore, environmental review for a sphere action is based upon evaluating the impacts associated with expanding the sphere beyond any agency’s current boundary, and is not related to the configuration or boundary of the originally established or most recently Commission-adopted SOI for that agency.” This summary mischaracterizes CEQA’s baseline principles and conflicts with the agency’s obligations to make factual determinations in light of the circumstances presented, based on substantial evidence. (See Section III, *supra*.)

The staff report further states that “[w]ater and wastewater services are considered growth-inducing, and the territory of local agencies providing these services is normally subject to significant development potential. As a result, the MSR/SOI Update for these types of municipal service providers is more costly due to the level of complexity involved and associated potential for environmental

impacts from service area expansions.” Under CEQA, however, whether providing water or wastewater services actually is growth-inducing is a fact-based inquiry that depends on the circumstances, especially as to whether providing services involves expansion of infrastructure systems beyond those existing or already planned and analyzed. The complexity and associated cost of reviewing such changes also depends on the circumstances. CEQA makes none of the factual assumptions or legal presumptions of impact, complexity, or cost asserted in the staff report. (See, e.g., CEQA Guidelines, §§ 15126, 15126.2.)

AAM:jis