

From: [Judy Deertrack](#)
To: [Gabriel Perez](#)
Subject: Fwd: Public Commentary / Planning Commission Item #4 / July 5, 2023 / TIME SENSITIVE
Date: July 05 23 4:59:23 PM
Attachments: [EXHIBIT A Governor's Office of Planning & Research OPR LAFCO, Annexations & CEQA.pdf](#)
[EXHIBIT B LAFCO Policies on Environmental Review \(Santa Cruz County\).pdf](#)
[EXHIBIT C The Impacts of Annexation on Jordan River.pdf](#)

Gabriel,

My apologies that this came so late. We had personnel from my client that have been out of the state and just returned, we just found out. The impetus to this is a request that the Planning Commission determine whether environmental review of potential annexation should start during pre-application review on the Sphere of Influence. Please see my materials, below.

Judy Deertrack
 Deertrack Consulting, LLC
 760 325 4290

----- Forwarded message -----

From: **Judy Deertrack** <judydeertrack@gmail.com>
Date: Wed, Jul 5, 2023 at 4:37 PM
Subject: Public Commentary / Planning Commission Item #4 / July 5, 2023 / TIME SENSITIVE
To: <cityclerk@coachella.org>

City Clerk
 Planning Department
 City of Coachella

Re: Planning Commission Item 4 / General Plan Land Use Consideration / Preliminary to Sphere of Influence

To Whom It May Concern:

Thank you to Planning Staff for their hard work and conscientious expertise in putting these planning documents together for review by the Planning Commission. That work is always appreciated.

With kind regard, I want to recommend that the basis for environmental review of tonight's planning action on Item 4 be expanded. I feel that it is currently inaccurate and incomplete because the orientation is based upon whether or not the City of Coachella is changing the land use designation in any substantial manner from what its classification from the County of Riverside. I feel that this is deficient, and should be expanded. I have included instructional materials to support this.

The California case decisions are clear that annexation itself should be assessed fully for its sprawl impact, and any changes in all classifications from alterations of jurisdictions, their policies, the alterations in public facilities, transportation impacts, and infrastructure from a city enlarging the scope of their land holdings, and changing the internal policies that apply,

including the Climate Action Plan, and/or Sustainability Guidelines that may apply to the properties that may be enhanced or negatively impacted from the change in jurisdictions.

The case law differs throughout California, depending upon the circumstances, on whether a Sphere of Influence change is a project subject to CEQA review, but this has not been discussed at all or assessed at all in the staff report, and it requires discussion and review. I do not have the LAFCO policies for this jurisdiction, but I have attached those from Santa Cruz County, and LAFCO should receive all environmental consideration for comment as a Responsible Agency. I did not see this routed to LAFCO, nor did I see their commentary. My question is whether it is required at this stage or not, and that has not been discussed in the staff report.

Thank you for your kind review of this comment letter. My real concern is the full application of any Climate Action Plan policies and/or Sustainability Guidelines from your General Plan Element (SNE) as applied to this action, and how that will differ from policies that are in effect currently from the County of Riverside. That not only impacts greenhouse gases, but also wildlife corridors, or sustainable open lands policies.

Thank you.

Judy Deertrack
Deertrack Consulting LLC
Palm Springs, CA
760 325 4290



LAFCOs, General Plans, and City Annexations

February 7, 2012

STATE OF CALIFORNIA
Edmund G. Brown, Jr,
Governor

GOVERNOR'S OFFICE
OF PLANNING AND
RESEARCH

1400 Tenth Street
Sacramento, CA 95814

P.O. Box 3044
Sacramento, CA 95812

(916) 322-2318

www.opr.ca.gov

This page intentionally left blank



State of California

Edmund G. Brown, Jr., Governor

Governor's Office of Planning and Research

Ken Alex, Director

Project Manager

Ben Rubin, OPR

Prepared by

Ken Lee, RSG, Inc

Holly Whatley, Colantuono & Levin, PC

Contributors

Chris Calfee, OPR

Debbie Davis, OPR

Cuauhtémoc Gonzalez, OPR

Michael McCormick, OPR

Advisory Committee

William Chiat, Executive Director, CALAFCo

Carole Cooper, Sonoma LAFCo

Steve Lucas, Butte LAFCo

Lou Ann Teixeira, Contra Costa LAFCo

This publication was developed through the support of the California Association of Local Agency Formation Commissions (CALAFCO) (<http://www.calafco.org>)

Please feel free to reproduce all or part of this document. You need not secure permission. We ask that you print it accurately and give credit to the Governor's Office of Planning and Research (OPR).

This page intentionally left blank

Table of Contents

Introduction	2
Background: The Role of the LAFCO	3
Local Government Role in Planning and Regulating Land Use	5
Annexations	6
Pre-Application.....	6
Application Filing and Processing.....	6
LAFCO Review and Consideration.....	7
Protest Proceedings.....	7
Final Certification.....	8
Consistent Annexations	9
Disadvantaged Unincorporated Communities	12
Spheres of Influence and Municipal Service Reviews	13
Rezoning	16
Environmental Review	17
Summary	19
Conclusion	21
Table of Cases Cited	22
Annexation Process Flowchart	23

This page intentionally left blank

Introduction

“It is the intent of the Legislature that each commission ... establish written policies and procedures and exercise its powers ... in a manner consistent with those policies and procedures to encourage and provide planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space lands within those patterns...Among the purposes of a commission are discouraging urban sprawl, preserving open-space and prime agricultural lands, efficiently providing government services, and encouraging the orderly formation and development of local agencies based upon local conditions and circumstances” (Gov. Code Section 56300 and 56301).

Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, as Amended, Title 5, Division 3, Part 2, California Government Code

In 2000, the Legislature passed AB 2838 (Chapter 761, Statutes of 2000) making the broadest and most significant set of sweeping changes to local government reorganization law since the creation of Local Agency Formation Commissions (LAFCOs). In addition to renaming the act the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (“CKH Act”), AB 2838 affirmed and strengthened the role of LAFCO in helping shape the future physical and economic growth and development of the State, including, once again, the role of LAFCO in annexation proceedings.

To provide a primer on LAFCOs from a land use planning perspective, the Governor’s Office of Planning and Research (OPR), in cooperation with the California Association of Local Agency Formation Commissions (CALAFCO), has prepared this publication about the city annexation process, the California Environmental Quality Act (CEQA) and local general plans. The CKH Act provides opportunities for dovetailing the requirements of the Planning and Zoning, CEQA and annexation laws which, in turn, can promote efficiency in processing applications. OPR and CALAFCO also recognize that early consultation and collaboration between local agencies and LAFCO on annexations is a best practice that is encouraged in this publication, including coordination on CEQA review, general process and procedures, and fiscal issues.

Although the CKH Act addresses district formation, incorporation, and other types of changes of organization, this publication focuses on city annexations. Consequently, it is geared towards the non-LAFCO planner and city official and is not intended to be an in-depth, technical discussion of the CKH Act. OPR and CALAFCO offer best practice tips, relevant to current and emerging trends and topics in California land use law and the CKH Act. This publication is based upon OPR’s and CALAFCO’s reading of current State statute, recent case law, and the General Plan Guidelines, as updated by OPR. References are to the California Government Code unless otherwise indicated.

For a review of the CKH Act as it relates to California planning, zoning, and development laws, please refer to Guide to California Planning, 3rd Edition or Longtin’s California Land Use, 2nd Edition. These general references address planning, zoning, subdivisions, sign controls, and exactions, as well as LAFCO activities. For more general information about the role, structure, and powers of LAFCOs, refer to *It’s Time to Draw the Line: A Citizen’s Guide to LAFCOs* (May 2003).

Background: The Role of the LAFCO

The Knox-Nisbet Act, the Municipal Organization Act (MORGA), and the District Reorganization Act – three separate, but interrelated State laws – authorized local boundary changes and municipal reorganization, such as annexations, incorporations, and the creation of special districts. Long-standing difficulties in implementing and reconciling these distinct, and at times incompatible, laws led the Legislature to adopt the Cortese-Knox Local Government Reorganization Act. The Cortese-Knox Act combined these statutes into a single law, which eliminated duplicate and incompatible sections.

In 2000, the Legislature passed AB 2838 (Hertzberg), which was the most significant and comprehensive legislative reform to local government reorganization law since the 1963 statute that originally created LAFCOs in each county. Development of the legislation resulted from the recommendations of the Commission on Local Governance for the 21st Century. For more information on the Commission, please see their 2000 publication, *Growth Within Bounds*.

AB 2838 (Hertzberg, 2000), recognizes and affirms the important role that LAFCOs play in California in serving as an arm of the State, not only in the oversight of local government boundaries, but in evaluating and guiding the efficient, cost-effective, and reliable delivery of municipal services to California’s citizenry. AB 2838 expanded the powers and duties of LAFCO, in its decision-making role in government organization changes, and its examination and guidance of municipal service location and extension timing. The CKH Act provides the framework for proposed city and special district annexations, incorporations/formations, consolidations, and other changes of organization. This law establishes a LAFCO in each county, empowering it to review, approve, or deny proposals for boundary changes and incorporations/formations for cities, counties, and special districts.

LAFCOs are composed of elected officials from the county and local cities, and a member of the general public. As of 2011, 29 of the 58 LAFCOs also have special district representation. In addition, some LAFCOs have special membership pursuant to the CKH Act.

The State delegates each LAFCO the power to review and approve with or without amendment, wholly, partially, or conditionally, or disapprove proposed annexations, reorganizations, and incorporations, consistent with written policies, procedures, and guidelines adopted by the commission. In granting these powers, the State has occupied the field of annexation law to the exclusion of local legislation. Therefore, a city or county cannot take actions which hinder or conflict with State annexation procedures. For this reason, a city cannot adopt a local ordinance which would allow city voters to pass sole judgment on proposed annexation proceedings (*Ferrini v. City of San Luis Obispo* (1983) 150 Cal.App.3d 239 and *L.I.F.E. v. City of Lodi* (1989) 213 Cal.App.3d 1139). A city also cannot circumvent annexation law or the LAFCO process and cannot provide new or extended services outside its jurisdictional boundaries unless approved by LAFCO under specified circumstances (Section 56133).

Best Practice Tip #1

If you have a controversial or complicated annexation proposal, talk to the LAFCO executive officer about “Terms and Conditions.” LAFCO has broad authority to impose Terms and Conditions on annexations that can guide or influence which agency does what, where, when, and how as part of the annexation. Cities and other stakeholders can work with LAFCO to craft Terms and Conditions that address potential barriers to annexations.

Each LAFCO operates independently of the State and of local government agencies. However, LAFCO is expected to act within a set of State-mandated parameters encouraging “planned, well-ordered, efficient urban development patterns,” the preservation of open-space lands, and the discouragement of urban sprawl. The Legislature has taken

care to guide the actions of the LAFCOs by providing Statewide policies and priorities (Section 56301), and by establishing criteria for the delineation of spheres of influence (SOIs) (Section 56425).

Local Government Role in Planning and Regulating Land Use

Local governments have the primary responsibility for planning and regulation of land uses. State law requires each city and county to prepare and adopt a “comprehensive, long-term general plan for the physical development” of the community. This general plan must cover all incorporated territory and should go beyond the city limits to include “any land outside its boundaries which ...bears relation to its planning” (Section 65300).

A city’s general plan is an important statement of the city’s future intent. It allows city officials to indicate to State agencies, local governments, and the public their concerns for the future of surrounding unincorporated lands. Since the general plan is a policy document with a long-term perspective, it may logically include adjacent territory the city ultimately expects to annex or to serve, as well as any area which is of particular interest to the city. The city’s SOI (which is established by the LAFCO) describes its probable physical boundaries and service area and can therefore be used as a benchmark for the maximum extent of the city’s future service area. The city may choose to plan for land uses beyond its SOI when coordinating plans with those of other jurisdictions (2003 General Plan Guidelines).

Through legislation and case law, the general plan has assumed the status of the “constitution for all future development” (*Citizens of Goleta Valley v. Board of Supervisors of the County of Santa Barbara* (1990) 52 Cal.3d 553). As a result, most local land use decision-making now requires consistency with the general plan. The same is true of public works projects (*Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988) and, in several cases, voter zoning initiatives (*Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531 and *Goleta*, supra).

Senate Bill 244 (Chapter 514, Statutes 2011, Wolk) amended general plan statutes to include planning for unincorporated disadvantaged communities. Cities, on or before the due date for the next adoption of its housing element, must review and update the land use element of their general plans to include the identification of unincorporated island or fringe communities within the city’s SOI, and to analyze for each identified community: (1) “water, wastewater, stormwater drainage, and structural fire protection needs or deficiencies”; and (2) “benefit assessment districts or other financing alternatives that could make the extension of services to identified communities financially feasible” (Section 65302.10). SB 244 is discussed further in the “Disadvantaged Unincorporated Communities” section of this publication.

Annexations

Annexation is the means by which an existing city extends its corporate boundaries. In its most basic form, annexation can be considered a five-part process. The steps are generally outlined below. Please refer to the flowchart on page 23 for a visual outline of the process.

Pre-Application

An application may be filed with the LAFCO by petition of affected landowners or registered voters, or by resolution from the involved city. Prior to filing, the proponent should meet with the LAFCO executive officer to establish the minimum requirements for processing, and then meet with any affected special districts and agencies to agree upon a taxation scheme and needed property tax transfers. Unless determined to be statutorily or categorically exempt from CEQA, LAFCO's action is considered a "project" that is subject to CEQA review, and an initial study will be required. The CKH Act requires rezoning of the site by the affected city. This usually makes the city the "lead agency" for CEQA documents and the LAFCO a "responsible agency." The city should coordinate with the LAFCO early on in the application process to ensure LAFCO's action on the annexation is adequately covered by the CEQA document. In most cases, the city (or the private proponent) will be responsible for preparing the initial study and the environmental document with LAFCO input.

Best Practice Tip #2

Meet with the LAFCO executive officer as early as possible to discuss the annexation proposal, identify potential political, financial, or procedural "red flags," and understand the local LAFCO's application requirements. Section 56652 gives LAFCO broad authority to require data and information as part of the application. While application requirements vary between LAFCOs, typical application requirements include:

- Application form
- Filing and Processing Fees
- CEQA and rezoning documentation
- Map and metes and bounds legal description
- Plan for providing services (required by Section 56653)
- Property tax exchange resolutions
- Associated SOI amendments, if required

Application Filing and Processing

LAFCO has 30 days to review an annexation application and determine that it is complete for processing, or notify the applicant that the application is not complete. If an annexation application also includes the detachment of territory from a city or annexation to a special district, LAFCO must follow special procedures that provide the detaching city or annexing special district the opportunity to request termination of the proceedings by resolution (Sections 56751 and 56857). LAFCO must honor the request. When a local agency initiates annexation by resolution of application, it must submit a plan for providing services. At a minimum, the plan must address the type, level, range, timing, and financing of services to be extended, including requirements for infrastructure or other public facilities. Before the executive officer issues a certificate of filing, the involved city, county, and affected special districts are required to negotiate the allocation of property tax revenues during a 60-day mandatory negotiation period, unless extended to 90 days (Revenue & Taxation Code Section 99 and 71 Ops.Cal.Atty.Gen. 344 (1988)). If an agreement is not reached, Revenue and Taxation Code Section 99(e)(1) outlines an alternative negotiation, mediation, and arbitration process that is required by statute.

The law does not require they reach agreement at the end of this process. Nonetheless, if the city and county cannot reach an agreement on the exchange of property tax, an impasse will stall or could terminate the process (*Greenwood Addition Homeowners Association v. City of San Marino* (1993) 14 Cal.App.4th 1360). Without an agreement, the executive officer is prohibited from issuing a certificate of filing which is a precondition to LAFCO's consideration of an application for annexation; the application cannot proceed.

Once the application has been accepted as complete, the executive officer will issue a certificate of filing and set the proposal for commission consideration within 90 days. During the application process, LAFCO will work with the applicant and affected agencies to analyze the proposed annexation in light of the commission's State mandated evaluation criteria (Section 56668) and responsibilities, and its own locally adopted policies and procedures.

LAFCO Review and Consideration

LAFCO may approve, conditionally approve, or deny the proposed annexation. LAFCO cannot disapprove an annexation if it meets certain requirements (Section 56375(a)(4), including "island annexations" that are 150 acres or fewer in size (Section 56375.3). However, only in the latter case are protests required to be waived, if all criteria are met. The lead agency, whether it is the LAFCO or the involved city, must comply with CEQA requirements prior to the LAFCO's action. Within 30 days of the LAFCO's resolution, any person or affected agency may file a written request with the executive officer for reconsideration of the annexation proposal based on new or different facts that could not have been presented previously (Section 56895).

Protest Proceedings

Unless waived pursuant to Section 56375.3 as an island annexation, or in cases where landowners have provided written consent (56663)(a)(c) or have not objected after receiving notice of the commission's intent to waive protest proceedings (56663)(d), LAFCO, acting as the "conducting authority" in accordance with the requirements of the CKH Act, will hold a public protest hearing to determine whether the proposed annexation must be terminated, or approved with or without an election, to determine the proposal's outcome.

For annexations of inhabited territory (containing 12 or more registered voters), LAFCO must: 1) Terminate the proceedings if it receives protests from 50 percent or more of the registered voters within the territory; 2) Order the annexation subject to an election if it receives protests from either at least 25 percent, but less than 50 percent, of the registered voters residing in the affected territory or from at least 25 percent of the number of owners of land who also own at least 25 percent of the assessed value of land within the affected territory; or, 3) Order the annexation without an election if it receives protests from less than 25 percent of the registered voters or less than 25 percent of the number of owners of land owning less than 25 percent of the assessed value of land within the affected territory.

For annexations of uninhabited territory (containing fewer than 12 registered voters), the LAFCO must: 1) Terminate

Best Practice Tip #3

Annexation attempts can fail if the affected city and county cannot reach agreement on a property tax split. In the early planning stages, the applicant should ascertain if a master property tax exchange agreement exists between the affected city and the county, and if there are concerns about the likelihood of a property tax exchange agreement. Property tax exchange agreements can be structured to address fiscal and related issues.

Best Practice Tip #4

There are examples around the State of annexations that have involved pre-annexation agreements and development agreements by cities, counties, and landowners/developers that align the timing and structure of the annexation process relative to the city and/or county entitlement and development phasing process.

the proceedings if it receives protests from landowners owning 50 percent or more of the assessed value of the land within the territory; or, 2) Order the change of organization or reorganization if it receives protests from owners of land who own less than 50 percent of the total assessed value of land within the affected territory. If the proposal is terminated, the executive officer will issue a certificate of termination of proceedings and no new annexation may be proposed on the site for at least one year, unless the LAFCO waives the limitation upon finding that the limitation is detrimental to the public interest (Section 57090). When an election is required, registered voters residing within the affected territory are entitled to vote on the issue of annexation (Section 57142).

Final Certification

When the LAFCO executive officer is satisfied that all elements of the CKH Act have been properly addressed, and that all conditions have been met, the executive officer will issue a certificate of completion. The annexation is not complete until it has been certified by the executive officer (Section 57200). The commission may establish an “effective date” for the annexation. Alternatively, the effective date will be the date the certificate of completion is recorded by the County Recorder (Section 57202). Once the annexation is recorded, there is no administrative recourse except by legal challenge.

Consistent Annexations

State law does not mandate that annexations conform to local general plans beyond requiring that “the decision of the [LAFCO] commission with regard to a proposal to annex territory to a city shall be based upon the general plan and rezoning of the city” (56375)(a)(7). However, the commission will also consider “consistency with the city or county general and specific plans” when appropriate (Section 56668(g)). Nonetheless, the statutes contain numerous references that attempt to link local land use and open-space policies, including Williamson Act contracts, to the annexation process (Sections 56300, 56375, 56377, 56425). Accordingly, the commission should attempt to harmonize local planning policies with the intent of the State legislation. Where there is a clear conflict, such as incompatibility between city and county general plans, the State precepts should prevail.

The factors that the LAFCO must consider in reviewing annexation proposals include, but are not limited to, the following (Section 56668):

- a) Population and population density; land area and land use; per capita assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas, during the next 10 years.
- b) The need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed incorporation, formation, annexation, or exclusion and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas.
- c) The effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county.
- d) The conformity of both the proposal and its anticipated effects with both the adopted commission policies on providing planned, orderly, efficient patterns of urban development, and the policies and priorities in Section 56377.
- e) The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by Section 56016.
- f) The definiteness and certainty of the boundaries of the territory, the nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory, and other similar matters affecting the proposed boundaries.
- g) A regional transportation plan adopted pursuant to Section 65080, and its consistency with city or county general and specific plans.
- h) The SOI of any local agency which may be applicable to the proposal being reviewed.

Best Practice Tip #5

As of 2008, LAFCOs must consider regional transportation plans and sustainable communities strategies (SB 375, Chapter 728, Statutes of 2008); the timely availability of water supplies; regional housing needs assessment (RHNA) allocations; and the promotion of environmental justice. Check with your LAFCO for local policies and procedures that may exist to address these factors and others listed in Section 56668. It is also good practice to include LAFCO consideration of these factors in the lead agency's CEQA document.

- i) The comments of any affected local agency or other public agency.
- j) The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for those services following the proposed boundary change.
- k) Timely availability of water supplies adequate for projected needs as specified in Section 65352.5.
- l) The extent to which the proposal will affect a city or cities, and the county in achieving their respective fair shares of the regional housing needs as determined by the appropriate council of governments consistent with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7.
- m) Any information or comments from the landowner or owners, voters, or residents of the affected territory.
- n) Any information relating to existing land use designations.
- o) The extent to which the proposal will promote environmental justice. As used in this subdivision, “environmental justice” means the fair treatment of people of all races, cultures, and incomes with respect to the location of public facilities and the provision of public services.

Island Annexations

Under Government Code Section 56375(a)(4), a LAFCO is required to approve a city’s request to annex land adjacent to its borders when the commission finds that any of the following circumstances exist:

- a) The land is substantially surrounded by the city or the Pacific Ocean, is substantially developed or developing, is not prime agricultural land, is designated for urban growth in the city’s general plan, and is not within the SOI of another city.
- b) The land is located within an urban service area designated by the LAFCO, is not prime agricultural land, and is designated for urban growth in the city’s general plan.
- c) The land meets the criteria for unincorporated islands under Section 56375.3.

Best Practice Tip #6

Before proceeding with a small island annexation, verify the effective sunset date of Section 56375.3. The current sunset date is January 1, 2014.

Best Practice Tip #7

The Attorney General has opined that, for annexations that include protest procedures, such procedures satisfy the voter approval requirements of Proposition 218 where the annexation is conditioned on a tax, assessment or fee being extended to the affected territory (82 Ops.Cal.Atty.Gen. 180 (1999)). To date, however, there has been no Attorney General Opinion or court decision on whether the voter requirements of Proposition 218 apply to small island annexations under Section 56375.3, for which protest proceedings are expressly waived. Before proceeding with a small island annexation, talk to your local LAFCO executive officer about the application of Proposition 218 to your proposal.

Island annexations under Section 56375.3 must be approved by LAFCO, with or without terms and conditions, and protest proceedings must be waived. This special provision was added to the Cortese-Knox Act in 2000 with the passage of AB 1555 (Chapter 921, Statutes of 1999), a bill sponsored by the League of California Cities to streamline

“small island annexations” (islands 150 acres or less) that are in the interest of the public welfare. The bill included a “sunset” date for these special provisions. The sunset date was previously extended by the Legislature. The current sunset date is January 1, 2014.

Best Practice Tip #8

Talk to your local LAFCO executive officer about local policies or procedures the LAFCO may have adopted to address the implementation of legislative changes to the CKH Act, like SB 244 (Wolk, 2011).

Disadvantaged Unincorporated Communities

On October 7, 2011, Governor Edmund G. Brown, Jr. signed SB 244 (Wolk) into law (Chapter 513, Statutes of 2011) making changes to the CKH Act related to “disadvantaged unincorporated communities.” The legislative intent of this law is “to encourage investment in these communities and address the complex legal, financial, and political barriers that contribute to regional inequity and infrastructure deficits” within them. A disadvantaged unincorporated community is defined in the CKH Act (Section 56033.5) as “inhabited territory...or as determined by commission policy, that constitutes all or a portion of a disadvantaged community as defined by Section 79505.5 of the Water Code,” which states, “a community with an annual median household income that is less than 80 percent of the Statewide annual median household income.”

SB 244 made several changes to the CKH Act:

1. It prohibits LAFCO from approving an annexation to a city of any territory greater than 10 acres, or as determined by commission policy, where there exists a disadvantaged unincorporated community that is contiguous to the proposed annexation area unless an application to annex the disadvantaged unincorporated community to the subject city has been filed with the LAFCO. However, an application to annex a contiguous disadvantaged unincorporated community is not required if a prior application for annexation of the same community has been made within the preceding five years or if the commission finds that a majority of residents of the community are opposed to annexation.
2. For an update of a sphere of influence of a city or district that provides public facilities or services related to sewers, municipal and industrial water, or structural fire protection that occurs after July 1, 2012, LAFCO must consider the present and probable need for public facilities and services of any disadvantaged unincorporated communities within the existing sphere of influence. The commission may assess the feasibility of governmental reorganization of agencies to further the goals of orderly development and efficient and affordable service delivery.
3. LAFCO must include, in its statement of written determinations of municipal service reviews considerations relating to disadvantaged unincorporated communities within or contiguous to an agency’s sphere of influence.

Spheres of Influence and Municipal Service Reviews

Spheres of Influence

LAFCOs exercise both regulatory and planning functions. While annexations are a regulatory act, LAFCOs' major planning task is the establishment, periodic review, and update of SOIs for the various governmental bodies within their jurisdictions. As described by Section 56076, the SOI is "a plan for the probable physical boundaries and service area of a local government agency as determined by the commission." In establishing, amending, or updating a SOI, a LAFCO must consider and make written determinations with regard to the following factors (Section 56425(e)):

1. The present and planned uses in the area, including agricultural and open-space lands.
2. The present and probable need for public facilities and services in the area.
3. The present capacity of public facilities and the 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.
5. For an update of a sphere of influence of a city or special district that provides public facilities or services related to sewers, municipal and industrial water, or structural fire protection, that occurs on or after July 1, 2012, the present and probable need for those public facilities and services of any disadvantaged unincorporated communities within the existing sphere of influence (SB 244 (Chapter 513, Statutes of 2011)).

The SOI is an important benchmark because it defines the primary area within which urban development is to be encouraged (Section 56425). In a 1977 opinion, the California Attorney General stated that an agency's SOI should "serve like general plans, serve as an essential planning tool to combat urban sprawl and provide well planned efficient urban development patterns, giving appropriate consideration to preserving prime agricultural and other open-space lands" (60 Ops.Cal.Atty.Gen. 118). Like general plans, SOIs may be reviewed and updated from time to time, or upon request by any person or local agency. SOIs may also be reviewed and updated following significant changes in regional or State policy that may affect an existing SOI, such as the adoption of a Sustainable Communities Strategy consistent with Senate Bill 375 (Chapter 728, Statutes of 2008). The CKH Act provides that every five years, LAFCO shall, as necessary, review and update each local agency's SOI under LAFCO jurisdiction.

The California Appellate Court holds that SOIs must be adopted before an annexation to the affected city or district can be considered. (*Resource Defense Fund v. LAFCO* (1983) 138 Cal.App.3d 987). Depending on local policy, some LAFCOs consider SOI amendments and associated annexations separately. Section 56427 requires LAFCO to send notice of pending annexation hearings to those affected agencies whose SOIs contain territory within the proposal.

LAFCO has sole responsibility for establishing a city's SOI. For cities with territory in more than one county, the LAFCO in the county having the greater portion of the entire assessed value of all taxable property within the

city has exclusive jurisdiction to determine the city's SOI and conduct municipal service reviews (Placer County LAFCO v. Nevada County LAFCO (2006) 135 Cal.App.4th 793). Further, the LAFCO is not required to establish an SOI that is greater than the city's existing boundaries. LAFCO may take joint action to approve an annexation while at the same time amending the city's SOI. (City of Agoura Hills v. LAFCO (1988) 198 Cal.App.3d 480).

LAFCO officials and local decision-makers recognize the logical assumption that the lands lying within the SOI are those that the city may someday propose to annex. If the city finds that annexing an area outside its SOI would be in the public interest, it should first request that its SOI be amended to include that area.

City-County Coordination in Spheres of Influence

Counties possess sole land use jurisdiction over unincorporated territory whether located outside or inside of a city's SOI. When the Legislature passed AB 2838, it recognized that, as the future service provider of unincorporated land in a city's SOI, the city should have an opportunity to address how land in the SOI is planned for and developed in anticipation of future annexation. This has both physical and fiscal ramifications for cities as future service providers. Before a city submits an application to LAFCO to update its SOI, the city and county shall meet in an effort to reach agreement on the SOI boundaries and the development standards and planning and zoning requirements within the SOI (Section 56425(b)).

Best Practice Tip #9

The CKH Act encourages collaboration among LAFCOs, cities, counties, landowners, and other local agencies to balance the timing and location of development within SOIs, including the establishment of SOIs in concert with long-range land use planning and annexations in concert with development entitlements and the extension of services. This is consistent with the legislative intent of the CKH Act to promote orderly development, discourage urban sprawl, preserve open space and prime agricultural lands, provide housing for persons and families of all incomes, and encourage the efficient extension of governmental services.

Under a separate but related provision of the CKH Act, LAFCO has the authority to review and comment on the extension of services into previously unserved, unincorporated territory, whether inside or outside of a city's SOI, including the creation of new service providers to extend "urban type development" into previously unserved, unincorporated territory (Section 56434). This provision of the CKH Act is scheduled to sunset on January 1, 2013.

Municipal Service Reviews

Another major change to LAFCO law from AB 2838 was the requirement for LAFCO to conduct municipal service reviews (MSRs) before or in conjunction with the establishment or update of SOIs (Section 56430). MSRs are conducted by geographic area or countywide and include a comprehensive review of all agencies that provide the services LAFCO identifies. As part of its review, LAFCO can evaluate alternatives for improving efficiency and affordability of infrastructure and service delivery. LAFCO is required to make seven written determinations for MSRs:

Best Practice Tip #10

If your city is preparing or updating a general plan, housing element, utilities master plan, or major facilities expansion that might affect your city's SOI or service delivery operations, consider coordinating early on with the LAFCO executive officer to share data and analysis related to MSRs.

1. Growth and population projections for the affected area.
2. The location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence.
3. Present and planned capacity of public facilities, adequacy of public services, and infrastructure needs or deficiencies including needs or deficiencies related to sewers, municipal and industrial water, and structural fire protection in any disadvantaged, unincorporated communities within or contiguous to the sphere of influence.
4. Financial ability of agencies to provide services.
5. Status of, and opportunities for, shared facilities.
6. Accountability for community service needs, including governmental structure and operational efficiencies.
7. Any other matter related to effective or efficient service delivery, as required by commission policy.

A major benefit of MSRs to local agencies is the creation and maintenance by LAFCO of countywide data as it relates to the seven MSR determinations. For more information about MSRs, please refer to OPR's 2003 publication, *LAFCO Municipal Service Review Guidelines*.

Prezoning

A city must prezone unincorporated territory that the city expects to annex in the future, or present evidence satisfactory to LAFCO that the existing development entitlements on the territory are vested or are already at build-out and are consistent with the city's general plan. The proposed zoning must be consistent with the city general plan and a public hearing must be held. LAFCO may not, however, dictate the specific zoning to be applied by the city.

There are two advantages to prezoning. First, the city will have zoning in effect immediately upon annexation. Local residents will thereby have prior knowledge of the land use regulations that would affect them should annexation occur. Second, prezoning serves as notice to the LAFCO of the city's intentions regarding its adjacent areas. As such, upon annexation of the territory, the city is restricted for a period of two years after the annexation's effective date from amending the general plan designation and zoning for the territory that is a departure from the prezoning. This restriction may be waived if the city makes a finding at a public hearing that a substantial change has occurred in circumstances that necessitates a departure from the prezoning.

In order to be effective, the prezoning must be consistent with the city general plan. In at least one instance, the Appellate Court upheld a LAFCO's authority to deny an annexation where a city had prezoned a site agricultural, but where the "ultimate intended use" as represented on the general plan was residential and industrial. The conversion to agricultural land had conflicted with adopted LAFCO policy. (*City of Santa Clara v. LAFCO* (1983) 139 Cal. App.3d 923).

Environmental Review

Both case law and the CEQA Guidelines support the applicability of CEQA to annexations and to related SOI amendments. The environmental document should be prepared early in the process and should address all aspects of the project, not merely the annexation.

In 1975, the California Supreme Court held in a Ventura County case that annexations are to be considered projects under CEQA and are subject to environmental analysis. Where the LAFCO had “proceeded as if CEQA did not exist” its decision was enjoined until an EIR could be prepared. The Supreme Court drew similarities between the purposes of CEQA and the annexation laws then in effect, requiring that the LAFCO harmonize these purposes through the preparation of an EIR (*Bozung v. LAFCO* (1975) 13 Cal.3d 263).

The CEQA Guidelines define a project as the whole of an action, not the separate governmental actions that may be necessary to complete it. Ideally, a single environmental document will be prepared to address the annexation as well as all related general plan amendments, rezoning, SOI, or other proposals. The CEQA document should include an evaluation of the environmental effects from future development of the affected annexation territory based on what would be allowed under the existing or proposed general plan and zoning provisions. The document should address,

among other concerns, the policy issues raised in Sections 56301 and 56375. If the EIR identifies one or more significant environmental impacts and the annexation is approved, the LAFCO and the city will be responsible for making findings pursuant to Sections 15091 and 15093 of the CEQA Guidelines justifying their actions.

Best Practice Tip #11

If your project may directly or indirectly trigger the need for future LAFCO approval (e.g., annexations or SOI amendments), coordinate CEQA review early on with the LAFCO executive officer to ensure the CEQA document adequately addresses LAFCO’s requirements as a responsible agency. Future LAFCO actions should be clearly identified in the project description and list of approvals required by other agencies.

The courts have had differing opinions over the application of CEQA to SOI determinations. In *City of Livermore v. LAFCO* (1986) 183 Cal.App.3d 531, the court held that CEQA was invoked when the Alameda County LAFCO changed the guidelines it used for determining SOIs. However, the court in *City of Agoura Hills v. LAFCO* (1988) 198 Cal.App.3d 480 concluded that establishing an SOI was not automatically a project under CEQA. According to *Agoura Hills v. LAFCO*, the Court held that, “the fact that SOIs are recognized as important factors in annexations does not compel the conclusion that they are per se ‘projects’ subject to CEQA.” The Agoura court did not dismiss the possibility that under other circumstances, an SOI determination could be a project.

Environmental documents prepared for annexations should also address all related rezonings or general plan amendments (*Bozung v. LAFCO*, supra; *Pistoresi v. City of Madera* (1982) 138 Cal.App.3d 284). Conversely, when rezoning is proposed the environmental document should discuss the effects of annexation. For example, in *Rural Landowners Association v. City Council* (1983) 143 Cal.App.3d 1013, the court held that an EIR prepared for a rezoning and general plan amendment was insufficient because it failed to consider the issue of the related annexation that was then in progress. Amending the SOI may also be subject to CEQA if significant effects are possible (63 Ops.Cal.Atty.Gen. 758 (1980)). The city proposing an annexation must provide the LAFCO sufficient information to satisfy the environmental analysis requirements (*City of Santa Clara v. LAFCO*, supra).

When rezoning is proposed as part of an annexation request, the city is deemed the lead agency for CEQA purposes (Section 15051 of the CEQA Guidelines). As lead agency, the city will be responsible for preparing the necessary environmental document.

Local agencies, which can use categorical exemptions under the CEQA Guidelines for annexations, should use them carefully. If the annexation will result in extending utilities beyond the level required to serve existing development, the categorical exemption under CEQA Guidelines Section 15319 cannot be employed (*Pistoresi v. City of Madera, supra*; *City of Santa Clara v. LAFCO, supra*). Use of Section 15319 is limited to when: (1) development already exists at the density allowed by the current zoning or rezoning; (2) the utilities which may be required for the ultimate use will not serve more than the development in existence at the time of annexation; and (3) the annexation consists of individual small parcels of the minimum size for those facilities which are included in Section 15303 of the CEQA Guidelines.

Summary

This summarizes the preceding points:

1. General Plan Consistency

Annexations should be part of the community's comprehensive plan for the community's future. Annexation should occur in an orderly and logical manner, consistent with both the city general plan and with State mandates, regarding service delivery and the conservation of agricultural and open-space lands.

If the annexation area has not been included or addressed in the city general plan, then an amendment to the plan should be considered. When evaluating the proposal for consistency with the plan, special consideration should be given to the annexation's impacts on existing and planned public services, agricultural and open-space lands, city housing supplies for all economic levels, and the adopted SOI.

2. Sphere of Influence

If the area proposed for annexation lies outside of the city's SOI, then a request to amend the city's SOI must occur prior to or concurrent with filing the annexation request with the LAFCO. The SOI proposal should be addressed in the environmental document.

3. Environmental Analysis

The environmental document prepared for the annexation should be comprehensive in scope. That is, necessary rezoning and related applications should be evaluated as part of the project even though they may not be under consideration for some time. It should be possible to use a single environmental document to address the whole project, including any SOI amendments and/or annexations involving cities and/or special districts.

4. Rezoning

Prior to annexation, the site should be rezoned to be consistent with the city general plan. Rezoning hearings can alert the city to opposition or to issues of particular concern prior to the filing of an application with the LAFCO. The rezoning, general plan amendment (if necessary), and comprehensive environmental document should be completed before the annexation proposal is submitted to the LAFCO for consideration. When rezoning is involved, the city is the lead agency for purposes of CEQA.

5. LAFCO Application

When the city initiates an annexation, it should provide the LAFCO with as much information about the project as possible. This would include general plan, rezoning, environmental analysis data, and the plan for providing services. If the environmental document prepared for rezoning or general plan amendment proposal is comprehensive, the LAFCO should be able to use it for the annexation, thereby streamlining the process. Annexation proponents should meet with the LAFCO executive officer prior to filing an application, in order to review the LAFCO application requirements.

6. Public Review

The city should encourage public review and comment at every stage of the process. While the CKH Act provides opportunities for review at the LAFCO and city hearing levels, the general plan and rezoning procedures offer additional opportunities for input. Early public response is helpful in assessing public sentiment and identifying areas of concern.

City hearings should be coordinated if feasible. Addressing more than one topic at each hearing may clarify the intent and the ramifications of the overall project. Candidates for combined city hearings are: rezoning and general plan amendment; and rezoning, general plan, and resolution of application initiating proceedings. Ask the involved LAFCO whether it is possible to combine hearings.

At the same time, both city and LAFCO hearings can be educational. They offer an opportunity to explain annexation procedures and the responsibilities of the city and the LAFCO. For example, residents are sometimes confused about the implications of annexations to property taxes, or the ability of a city, under certain circumstances, to annex territory without an election (Section 56375(d)). When appropriate, invite the LAFCO executive officer to city hearings on annexations or related city actions to address frequently asked questions about the process or effects of annexations.

Conclusion

Both the city and the LAFCO have a responsibility to see that the proposed expansion of corporate limits complies with the procedures laid out in the CKH Act, adopted LAFCO policies, and the two State policies iterated at the beginning of this publication. It is important that the city and the LAFCO coordinate the annexation process through cooperation and mutual discussion. When considering the annexation proposal, both the city and the LAFCO should look beyond the immediate and examine the future impacts of the total project on city services, sources of tax revenue, historic growth trends, and neighboring communities and cities. LAFCOs can provide cities with a great deal of information about the annexation process and the enabling legislation.

Table of Cases Cited

Bozung v. LAFCO
(1975) 13 Cal.3d 263

Citizens of Goleta Valley v. Board of Supervisors of the County of Santa Barbara
(1990) 52 Cal.3d 553

City of Agoura Hills v. LAFCO
(1988) 198 Cal.App.3d 480

City of Livermore v. LAFCO
(1986) 183 Cal.App.3d 531

City of Santa Clara v. LAFCO
(1983) 139 Cal.App.3d 923

Ferrini v. City of San Luis Obispo
(1983) 150 Cal.App.3d 239

Friends of B Street v. City of Hayward
(1980) 106 Cal.App.3d 988

Greenwood Addition Homeowners Association v. City of San Marino
(1993) 14 Cal.App.4th 1360

Leshar Communications, Inc. v. City of Walnut Creek
(1990) 52 Cal.3d 531

L.I.F.E. v. Lodi
(1989) 213 Cal.App.3d 1139

Pistoresi v. City of Madera
(1982) 138 Cal.App.3d 284

Resource Defense Fund v. LAFCO
(1983) 138 Cal.App.3d 987

Rural Landowners Association v. City Council
(1983) 143 Cal.App.3d 1013

OPINIONS OF THE ATTORNEY GENERAL

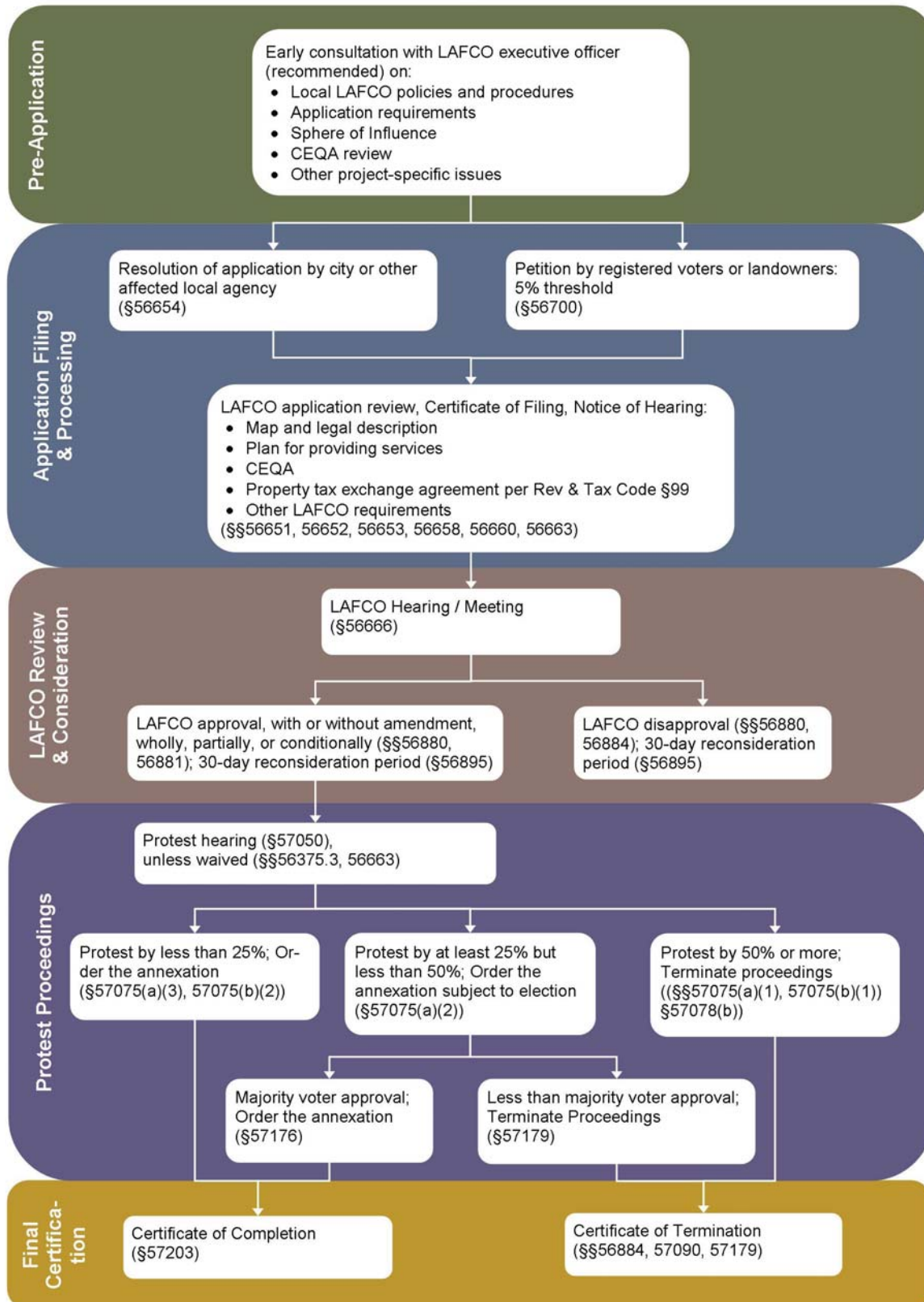
60 Ops.Cal.Atty.Gen 118 (1977)

63 Ops.Cal.Atty.Gen 758 (1980)

71 Ops.Cal.Atty.Gen 344 (1988)

82 Ops.Cal.Atty.Gen. 180 (1999)

Annexation Process Flowchart





LOCAL AGENCY FORMATION COMMISSION
OF SANTA CRUZ COUNTY

ENVIRONMENTAL REVIEW POLICY

Adopted on September 6, 2000 (Resolution No.2000-5)
Last Revision on August 5, 2020 (Resolution No. 2020-19)

1. OVERVIEW

This policy outlines the specific procedures used by LAFCO to tailor the general provisions of the California Environmental Quality Act (“CEQA”) Guidelines (California Code of Regulations, Title 14, sections 15000 et seq.) (“State CEQA Guidelines”) to LAFCO’s specific functions as both a “Responsible” and a “Lead” agency under CEQA. This version of LAFCO’s environmental review guidelines incorporates changes in the State CEQA Guidelines through 2019.

These provisions and procedures incorporate by reference (and are to be utilized in conjunction with) the State CEQA Guidelines, a copy of which is available on LAFCO’s website. These procedures will be revised as necessary to conform to amendments to the State CEQA Guidelines, within 120 days after the effective date of such amendments. However, LAFCO will implement any such statutory changes that the California Legislature makes to CEQA regulations as soon as those statutory changes become effective, even if not expressly stated herein.

2. PUBLIC AGENCIES’ RESPONSIBILITIES

A public agency must meet its own responsibilities under CEQA and shall not rely on comments from other public agencies or private citizens as a substitute for work that CEQA requires the Lead Agency to accomplish. For example, a Lead Agency is responsible for the adequacy of its environmental documents. The Lead Agency shall not knowingly release a deficient document hoping that public comments will correct defects in the document. When making decisions that trigger some type of CEQA review, LAFCO’s duty is to minimize the environmental damage that may result from those decisions and to balance the competing public objectives as outlined in the State CEQA Guidelines, section 15021.

3. LAFCO’S ENVIRONMENTAL RESPONSIBILITIES

LAFCO’s role as a regulatory agency involves “the discouragement of urban sprawl, the encouragement of the orderly formation, and development of local agencies.” A few of its duties require minimal environmental review, especially those involving the commissioning of studies, the hearing of protests, and consolidations, reorganizations and mergers of cities or districts. Most of these duties only constitute jurisdictional changes with no potential for land use changes or for significant effects on the physical environment.

LAFCO's more prominent roles include, but are not limited to, creation of spheres of influence, formation of new districts, incorporation of new cities, and annexations/reorganizations to cities or special districts. These types of LAFCO actions generally require more in-depth analysis, especially if they result in the direct or indirect physical change in the environment, like facilitation of growth and/or land use alterations. Factors that must be assessed in these cases involve land area and use, all aspects of the physical and human environment, geographical features, population growth and density, social and economic changes, availability of infrastructure and government services, conformity with city or county land use plans, and creation of unincorporated "islands," etc.

4. LAFCO'S ROLE AS AN "INTERESTED" AGENCY

In situations where LAFCO is not a "Responsible Agency" but has an interest in reviewing a project to ensure that LAFCO related information is correctly identified, LAFCO plays a more limited role in the CEQA process. In those instances, the Executive Officer will review, and, if necessary, comment on all environmental documents submitted by a Lead Agency involving projects/decisions relating to and/or affecting LAFCO projects or policies.

5. LAFCO'S ROLE AS AN "RESPONSIBLE" AGENCY

"Responsible" Agency status occurs when LAFCO is not the "Lead" Agency, but nevertheless has discretionary approval authority over a project or some aspect of a project, in tandem with, or separate from that of the Lead Agency in accordance with Section 15096 of the State CEQA Guidelines. Examples of situations where LAFCO may be a Responsible Agency include, but are not limited to:

- A city approving an annexation request to LAFCO, only after pre-zoning the area in question. When a city has pre-zoned an area, the city serves as the Lead Agency for any subsequent annexation of the area and should prepare the environmental documents at the time of pre-zoning or other land use decision; or
- When a special district has conducted an environmental review and prepared an environmental determination for a plan to serve an area proposed for annexation to the district.

LAFCO shall use the environmental document prepared by the Lead Agency for LAFCO's environmental determinations if the Executive Officer deems it adequate for such use pursuant to State CEQA Guidelines, Section 15096. Procedures for determining the adequacy of the lead agency's CEQA document are summarized in the following sub-sections.

4.1 Consultation

Pre-Application Discussion: Regardless of whether LAFCO is a Responsible Agency, each Lead Agency carrying out any project within LAFCO's jurisdiction and function shall inform LAFCO in writing of its intent and process for that project at the beginning of the Lead Agency's CEQA review process, and the Lead Agency shall provide LAFCO with copies of any project applications.

CEQA Determination: The Lead Agency shall consult with LAFCO regarding the preparation of its environmental documents/determinations (Statutory Exemptions, Categorical Exemptions, Initial Studies/Negative Declarations, Environmental Impact Reports (“EIR”), etc.), which must also be used by LAFCO in its role as a Responsible Agency; consultation can be written or verbal and LAFCO’s input shall be incorporated/addressed in the Lead Agency’s analysis, documentation and determinations.

LAFCO Initial Comments: The Executive Officer shall, as soon as practical but within 30 days of notification, comment as to the appropriate environmental determination from LAFCO’s perspective as well as issues of concern to be addressed in any environmental document. The requirement for written notification from the Lead Agency can be waived at the Executive Officer’s discretion.

Where LAFCO disagrees with the Lead Agency’s proposed environmental determination (such as a Negative Declaration), LAFCO will identify the specific environmental effects which it believes could result from the project and recommend the project be mitigated with measures to reduce the potential impacts to less than “significant” (when feasible) or that an EIR be prepared to properly characterize potentially significant impacts.

Notice of Preparation: When it intends to prepare an EIR, the Lead Agency shall send a Notice of Preparation by certified mail to LAFCO to solicit input in accordance with Section 15082 of the State CEQA Guidelines.

LAFCO shall respond to any Notice of Preparation submitted to LAFCO in accordance with subsection (A)(5) above in writing within 30 days, specifying the scope and content of the environmental data and analysis germane to LAFCO’s statutory responsibilities for the proposed project. LAFCO shall also provide the Lead Agency with input regarding environmental issues and the minimum content of the analysis needed to meet a standard of adequacy for use of the environmental document/determination by LAFCO as a CEQA Responsible Agency.

4.2 Preparation of Environmental Documents by a Lead Agency

The Lead Agency shall include information in the Statutory Exemption, Categorical Exemption, Initial Study/Negative Declaration/EIR to allow its subsequent use by LAFCO for its considerations; referencing on the title page and in the project description any boundary changes, changes of organization or reorganization, or other proposed actions requiring subsequent discretionary action by LAFCO to fully implement the project.

The Lead Agency shall send the draft document to LAFCO as part of the public review process required by the CEQA and applicable guidelines (sections 15072 and 15082 of the State CEQA Guidelines). The Executive Officer will, within the established review period, send comments to the Lead Agency in writing (which can be transmitted either via U.S. mail or overnight delivery, or electronically by email or other messaging system), all of which LAFCO expects to be incorporated and assessed in the final document. LAFCO’s comments on a draft CEQA document submitted to LAFCO by a lead agency should focus on the appropriateness of the CEQA document chosen, the

adequacy of the environmental document's content, in the case of an EIR -- additional alternatives or mitigation measures, etc., that are germane to environmental impacts that could result from LAFCO's subsequent discretionary action or to the adequacy of the document for use by LAFCO as a CEQA Responsible Agency.

A final EIR prepared by a Lead Agency or a Negative Declaration adopted by a Lead Agency shall be conclusively presumed to comply with CEQA for purposes of use by Responsible Agencies which were consulted pursuant to Sections 15072 or 15082, unless one of the following conditions occurs:

- The EIR or Negative Declaration is finally adjudged in a legal proceeding not to comply with the requirements of CEQA; or
- A subsequent EIR is made necessary by Section 15162 of the State CEQA Guidelines.

4.3 LAFCO Requirement of Environmental Documents/Determinations

Applications filed by Lead Agencies with LAFCO shall include copies of one of the following environmental documents as specified in LAFCO's filing requirements and all applicable findings for an EIR per Sections 15091, 15092 and 15093 of the State CEQA Guidelines.

- Exemptions: Certification of Categorical or Statutory Exemption;
- Negative Declaration: Notice of Intent to Adopt a Negative Declaration and a Final Negative Declaration (including copy of Initial Study) or a Final Negative Declaration with mitigation measures (including copy of Initial Study), all technical appendices, and Mitigation Monitoring/Reporting Plan;
- Environmental Impact Report: Notice of Subsequent Use of an Existing EIR (which was previously available or has been made available to LAFCO), Notice of Preparation of a Draft EIR, Notice of Availability/Notice of Completion of Draft EIR (including copy of Draft EIR), Final EIR, Statements of Findings/Overriding Considerations, and Mitigation Monitoring/Reporting Plan;
- California Department of Fish and Wildlife: copy of environmental filing fee receipt including, if applicable, a CEQA Filing Fee No Effect Determination Form; and/or
- Other Appropriate CEQA Documents: copy of any other environmental document/determination not listed in this policy.

4.4 LAFCO's Use of Lead Agency's Environmental Documents

In making its determinations on boundary change proposals, changes of organization or reorganization, or other proposed actions requiring discretionary action by LAFCO, LAFCO will generally use the environmental document prepared by the Lead Agency if the procedures regarding consultation and preparation of environmental documents by a Lead Agency outlined above have been followed.

Prior to project approval, the Commission will certify that it has reviewed and considered the information contained in the Lead Agency's document. LAFCO may request the Lead Agency furnish additional information or findings as required to support a legally adequate Responsible Agency environmental determination in accordance with Section 15096 of the State CEQA Guidelines.

When a Lead Agency's EIR identifies significant environmental effects, LAFCO will incorporate the Lead Agency's findings or formulate its own, for each significant effect, or otherwise make findings in accordance with State CEQA Guidelines, Section 15091 for each significant environmental effect that is identified in a Lead Agency's EIR.

LAFCO may take any of the following actions to conform to CEQA requirements when rendering a decision on an application:

- LAFCO will not approve a proposed project with significant impacts if it can adopt feasible alternatives or mitigation measures within its powers that would substantially lessen the magnitude of such effects, unless it adopts a Statement of Overriding Considerations (State CEQA Guidelines, section 15093);
- If LAFCO mitigates impacts listed in the EIR to a less than significant level via the adoption of boundary alternatives or conditions of approval (negotiated with the local agency), such findings shall be reinforced by adequate rationale and inserted in the record; or
- If the environmental impacts of the LAFCO decision cannot be mitigated to a less than significant level, LAFCO will adopt a Statement of Overriding Considerations per State CEQA Guidelines, Sections 15093 and 15096.

Upon project approval, LAFCO shall file a Notice of Determination in a like manner as a Responsible Agency in accordance with Section 15096(i) of the State CEQA Guidelines. The Notice of Determination shall be filed with the Santa Cruz County Clerk of the Board.

6. LAFCO'S ROLE AS AN "LEAD" AGENCY

LAFCO will be the Lead Agency responsible for performing CEQA mandated environmental review when its discretion for approval or denying a project involves general governmental powers. This is in contrast with a Responsible Agency role which only has single, limited powers over the project, normally subsequent and secondary to LAFCO's function, such as pre-zoning for the property of interest. Examples of projects requiring LAFCO to act as a Lead Agency include but are not limited to the following:

- Establishment of spheres of influence for cities and special districts;
- Adoption of studies or municipal service reviews; and
- Special District activation or divestiture of a function or class of service.

6.1 Delegation of Responsibilities by the Commission to the Executive Officer

The following quotations from Section 15025 of the State CEQA Guidelines indicate those functions that can and cannot be delegated to the Executive Officer by the Commission:

A public agency (the Commission) may assign specific functions to its staff (Executive Officer) to assist in administering CEQA. Functions which may be delegated include but are not limited to:

- Determining whether a project is exempt;
- Conducting an Initial Study and deciding whether to prepare a draft EIR or Negative Declaration (refer to Section IV, F. 2. of these guidelines for a discussion of the appeal process when an EIR is required.);
- Preparing a Negative Declaration or EIR;
- Determining that a Negative Declaration has been completed within a period of 180 days (see Section 21100.2 of CEQA);
- Preparing responses to comments on environmental documents; and
- Filing of notices.

The decision-making body of a public agency (the Commission) shall not delegate the following functions:

- Reviewing and considering a final EIR or approving a Negative Declaration prior to approving a project before the Commission; and
- The making of findings as required by Sections 15091 and 15093.

7. LAFCO'S LEAD AGENCY PROCEDURES

The following process and procedures, specific to LAFCO's function, summarize or supplement the State CEQA Guidelines and are to be used to process all accepted applications.

7.1 Statutory Exemptions (CEQA Guidelines, Sections 15260-15285)

Statutorily exempt projects defined by the Legislature that could apply to a LAFCO project include the following:

- Disapproved Projects: CEQA does not apply to projects that LAFCO rejects or disapproves. This statutory exemption is intended to allow an initial screening of projects on the merits for quick disapprovals prior to the initiation of the CEQA process where LAFCO can determine that the project cannot be approved. This statutory exemption shall not relieve an applicant from paying

the costs for an EIR or negative declaration prepared for the project prior to the lead agency's disapproval of the project after normal evaluation and processing.

- **Feasibility and Planning Studies:** A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or Negative Declaration but does require consideration of environmental factors. This section does not apply to the adoption of a plan that will have a legally binding effect on later activities.
- **Ministerial Projects:** Actions or Ministerial Projects involve the application of fixed standards without the option of exercising personal or subjective judgment (discretion) by the Executive Officer or the Commission. Examples include but are not limited to the following: (1) Consolidation/reorganization of special districts where the district boards adopt similar resolutions of applications for said consolidation/reorganization into a single agency (pursuant to Government Code Section 56853), and (2) Certain island annexations (pursuant to Government Code Section 56375) where approval is mandated if the annexation meets certain specific findings.

7.2 Categorical Exemptions (CEQA Guidelines, Section 15300)

The following classes of projects, specifically pertaining to LAFCO's activities, have been identified in the State CEQA Guidelines as not having the potential to cause significant environmental effects, and may be categorically exempt from the requirements of CEQA if certain specified criteria are satisfied (Note: A categorical exemption shall not be used for these activities where there is substantial evidence to support that one of the exceptions to the categorical exemptions in State CEQA Guidelines, section 15300.2 is present.):

- **Construction or Conversion of New, Small Structures (Class 3):** Included within this category are extraterritorial or out-of-agency service contracts/agreements involving the extension of water, sewer, and/or other utility services by a city or district outside its boundaries but lying within its respective sphere of influence.
- **Annexations of Existing Facilities and Lots for Exempt Facilities (Class 19):** Included within this category are: (1) Annexations to special districts where the district's services would be provided even without annexation and construction has been initiated prior to the issuance of a Certificate of Filing, (2) Annexations of areas containing existing public or private structures developed to the density allowed by current zoning or pre-zoning, whichever is more restrictive, (provided, however, that the extension of utility services within the annexed area would have a capacity to serve only those existing facilities), (3) Detachments from cities where the land being detached is committed, by virtue of an adopted land-use plan, to remain in agricultural use or open space; or where the land is presently developed and no change in land-use can be reasonably anticipated, and (4) Detachments from special districts which will not result in any change in zoning or land use.

- Changes in Organization of Local Agencies (Class 20): Included within this category are changes in the organization or reorganization of local agencies where the changes do not modify the geographic area in which previously existing powers are exercised. Examples include but are not limited to: (1) Establishment of a subsidiary district, (2) Consolidation of two or more districts having identical boundaries, (3) Merger with a city of a district lying entirely within the boundaries of the city, or (4) Reorganization of agencies consisting of annexations or detachments providing similar services.

7.3 Recordation of Notice of Exemptions

When a LAFCO project qualifies for an exemption, LAFCO staff may develop and record with the Santa Cruz County Clerk of the Board a “Notice of Exemption” form, to include: (1) A brief project description, (2) The project location with supporting map, (3) The specific exemption including the finding and citation of the CEQA Guidelines section or statute under which it is found to be exempt, and (4) The rationale for its selection, including a brief statement of reasons to support the findings.

7.4 Initial Studies

A project for which LAFCO is the Lead Agency and which is not exempt will require the preparation of an Initial Study to determine if the project has the potential for causing a significant environmental effect. The Initial Study assessment shall consider all phases of the project; the purposes, policies, rules, regulations and standards set forth in CEQA and its State CEQA Guidelines; these procedures and the adopted plans and policies of cities, the County, and LAFCO. An Initial Study need not be prepared if the Executive Officer determines at the beginning stages of review that a full-scope EIR will be required, but will be used to document the significance of specific impacts requiring a focused EIR, i.e. the Initial Study shall document the rationale for narrowing the scope of issues to be addressed in an EIR.

- Process: The Initial Study will be prepared on a State CEQA Guidelines Standard Initial Study Environmental Checklist Form using the project application, environmental description forms, appropriate literature, etc. A site visit may be necessary. Individual findings for environmental issues will be documented with sufficient technical data to substantiate conclusions regarding the potential for significant adverse impact. Insufficiency of available information will be noted on the form if it affects the ability to reach a conclusion.

The preparer shall consult with all Responsible Agencies and other public agencies/persons/organizations affected by or knowledgeable of the project and its issues. Under appropriate circumstances such review could also involve use of the County’s or a city’s Environmental Review Committee and its public forum to more fully assess the physical, social and infrastructural implications of complex projects. The Initial Study will be the supporting document for findings of “significance” and “non-significance” (whether to prepare a Negative Declaration or EIR). It is a tool for modifying projects and/or identifying mitigation measures to allow a finding of “non-significance.” It can also be used to focus the EIR on effects determined to be potentially significant or to determine whether a previously prepared EIR could be used/modified for the project, etc.

The Initial Study shall contain: (1) A project description and location; (2) Environmental setting; (3) Identification of all environmental impacts using the most recent version of the State CEQA Guidelines environmental checklist form (Appendix G) and substantial evidence to support environmental impact findings, including ways to mitigate (avoid, minimize, compensate or otherwise reduce) a significant impact to a less than significant level; and (4) Examination of project consistency with zoning and land-use plans, etc. Section 15063 of the State CEQA Guidelines contains a detailed description of the content of and uses for the Initial Study and it is hereby incorporated by reference. Funding for the preparation of an Initial Study shall be borne by the applicant for the LAFCO action pursuant to Commission policy.

- Executive Officer's Determinations/Findings: After review of the Initial Study and all supporting information, the Executive Officer shall determine the appropriate environmental determination based on one of the following findings:
 - 1) The project will not have a significant environmental effect. Prepare a Negative Declaration and a Notice of Determination and publish a Notice of Intent to Adopt a Negative Declaration. After an appropriate public review period consistent with the applicable State CEQA Guideline's requirements, the documentation will be finalized and forwarded to the Commission with a recommendation for adoption;
 - 2) The project, as proposed, would have a significant environmental effect, but with alterations, stipulations, or mitigation measures, all adverse impacts can be mitigated to a less than significant level. Prepare a Mitigated Negative Declaration and a Notice of Determination and publish a Notice of Intent to Adopt a Negative Declaration. After appropriate public review period consistent with State CEQA Guideline's requirements, the documentation will be forwarded to the Commission with a recommendation for adoption;
 - 3) The project will have a significant environmental effect, but all such impacts have been adequately assessed in a final EIR previously reviewed by LAFCO and mitigated to the extent feasible. Submit the EIR to the Commission with appropriate findings for certification;
 - 4) The project will have a significant environmental effect. An EIR will be prepared and submitted to the Commission with appropriate findings; or
 - 5) The project will have a significant environmental effect and an EIR has been prepared. However, new information or changed conditions affecting the project or the site warrant additional analysis. Prepare a supplemental EIR or addendum to the original EIR focusing on these changes. Submit to the Commission with appropriate findings for certification.

7.5 Negative Declaration or Mitigated Negative Declaration

A Negative Declaration (finding of non-significant effect) or a Mitigated Negative Declaration (finding of non-significant effect with project changes/mitigation measures/conditions of approval) will be prepared on the State CEQA Guidelines Initial Study Environmental Checklist Form by staff per the findings of the Initial Study based on substantiating evidence.

The Negative Declaration or Mitigated Negative Declaration's contents will include a brief project description, location (i.e., vicinity map), name of applicant, the finding of non-significance, attached Initial Study with any applicable technical reports, data or other information constituting the substantial evidence supporting the environmental analysis, and a list of mitigation measures (if any, in the context of a Mitigated Negative Declaration). A determination of the Initial Study's adequacy and the preparation of the accompanying Negative Declaration or Mitigated Negative Declaration initially rests with the Executive Officer. The formal adoption of the Negative Declaration or Mitigated Negative Declaration rests ultimately with the Commission.

- **Notice Requirements:** The document will be available at the LAFCO office for public review and comment for a minimum of 21 days prior to LAFCO action on the project. Recommended Negative Declarations and Mitigated Negative Declaration (in the form of a Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration) will be noticed at least once in a newspaper of general circulation in the project area; noticed in the "local" newspaper of the affected area (if any); mailed to all Responsible Agencies and public agencies with jurisdiction within the project area; mailed to those individuals and organizations who have requested such notices.

Where one or more state agencies will be a Responsible or Trustee Agency or will exercise jurisdiction over natural resources affected by the project, LAFCO shall send copies of the Negative Declaration or Mitigated Negative Declaration to the State Clearinghouse for distribution to these state agencies. Review by state agency(ies) will require a 30-day period unless reduced by prior approval of the State Clearinghouse. Pursuant to adopted Commission policy, costs associated with the Notice and distribution requirements shall be funded by the applicant for the LAFCO action.

- **LAFCO Consideration:** The Commission will consider the proposed Negative Declaration or Mitigated Negative Declaration and any public and agency comments prior to approving a project, and will approve the Negative Declaration or Mitigated Negative Declaration if it finds there is no substantial evidence in the whole of the administrative record that the project will have a significant environmental effect. Where mitigation is included as a condition of the Mitigated Negative Declaration, the mitigation monitoring and reporting program (MMRP) shall assign responsibility for implementing the mitigation measure(s) when the Mitigated Negative Declaration is approved by the Commission.

- **Notice of Determination:** After the Commission's approval of a project for which a Negative Declaration or Mitigated Negative Declaration has been adopted, the Executive Officer shall file a Notice of Determination. The Notice of Determination's content shall include: (1) Project description, identification and location; (2) Date project approved by LAFCO; (3) Determination of "non-significant" effect, or determination that mitigation measures were imposed and made conditions of approval for the project to reduce impacts to less than significant levels; (4) Statement that a Negative Declaration or Mitigated Negative Declaration has been prepared and approved; and (5) Address of LAFCO office where a copy of Negative Declaration or Mitigated Negative Declaration is filed.

The Notice shall be filed with the Santa Cruz County Clerk of the Board. If the project requires a discretionary approval from any state agency, the Notice shall also be filed with the State Office of Planning and Research, State Clearinghouse. Fees for filing a Notice of Determination for a Negative Declaration or Mitigated Negative Declaration shall be funded by the applicant for the LAFCO action.

7.6 Environmental Impact Report

If the Executive Officer or the Commission finds, based on substantial evidence in the record or contained in the Initial Study and public comments, that a project may have a significant environmental effect, the Executive Officer will initiate the preparation of an Environmental Impact Report ("EIR").

- **Purpose:** An EIR is an informational document; a major tool in the decision-making process, informing Commissioners and all parties involved of the environmental consequences of project decisions before they are made. An EIR's primary functions are to identify and mitigate significant adverse impacts and to provide alternative project and boundary options that may reduce potentially significant impacts of the proposed project.
- An EIR is not an instrument to rationalize approval or denial of a project; nor do indications of adverse impacts require automatic denial. LAFCO has the authority to balance environmental, economic, social or other objectives as part of its mandate to develop orderly governmental boundaries (Sections 15091, 15092 and 15093, State CEQA Guidelines). An EIR should be prepared early in the application process to facilitate the integration of environmental considerations in project or boundary design. The applicant is responsible for submitting all necessary project data for the EIR per the Executive Officer's request or funding the preparation of required project data for the EIR.
- **Appeals:** The Executive Officer's determination to require an EIR is appealable to the Commission within 10 working days of the issuance of the decision to prepare an EIR. Such appeal must be filed, on LAFCO forms, with the Executive Officer and must include specific substantiation for the appeal, directly related to environmental issues. The appeal shall be heard on the next regularly scheduled Commission agenda that permits adequate public notification. The Commission's decision shall be final. The only legal remedy available to appeal the Commission's final action is to file a petition for writ of mandate in the superior court under California Code of Civil Procedure Section 1085.

- Notice of Preparation: At the earliest feasible date following the Executive Officer's/Commission's formal decision to prepare an EIR (based on the administrative record or an Initial Study), a Notice of Preparation ("NOP") will be mailed to all responsible and affected agencies (including the State Clearinghouse and affected state agencies, if any) and any parties requesting notification. State review of an EIR will result in the issuance of an identification number (State Clearinghouse Number) which shall be used on all subsequent documentation and correspondence.

The NOP shall include sufficient information on the project and its anticipated impacts to facilitate meaningful responses on the environmental issues that may cause significant adverse impacts. Such content to include: (1) Project description; (2) Mapped location; (3) Probable environmental effects; and (4) A copy of the Initial Study or substantial evidence in the record justifying the preparation of an EIR, etc. The NOP shall be sent to all responsible/trustee agencies or interested parties via certified mail or other method to document its receipt.

Within 30 days after LAFCO's release of the NOP, each Responsible Agency/interested party shall submit to LAFCO specific information directly related to that agency's/party's statutory responsibility for the project; the environmental issues, alternatives, and mitigation measures to be explored; and the agency's/party's role in the project's review, etc. If LAFCO does not receive a response or request to extend the public comment period on the NOP by the end of the 30-day NOP review period, LAFCO may presume that no response will be made from an agency or party that received the NOP.

- Scope of EIR: LAFCO may also convene meetings involving all parties (especially at the request of a Responsible Agency) to further assist in the determination of the EIR's scope and content, no later than 30 days after such request. Early and complete scoping, consultation and negotiation are critical to the preparation of an adequate EIR. LAFCO may request use of the County's or a local agency's Environmental Review Committee in a public meeting forum to aid in the identification and resolution of any technical issues. LAFCO will compile all comments and identify in writing the focus for the EIR. An EIR can be prepared by staff or consultants under contract to LAFCO, coordinated by the Executive Officer or designee. LAFCO may accept data for an EIR from any source subject to independent validation by LAFCO staff. Also, LAFCO may charge an applicant appropriate fees to cover all costs for preparing and processing an EIR.
- EIR Content: Article 9 of the State CEQA Guidelines describes the complete content of all required sections of an EIR, as modified from time to time. However, LAFCO has discretion to narrow the scope of an EIR's content during the scoping process (State CEQA Guidelines, section 15063).
- Consultant EIRs: The Executive Officer shall use a Request for Proposals bidding process to select a consultant to write the EIR. The Executive Officer shall maintain and update as necessary a list of consultants, a minimum of three from which proposals shall be solicited for each consultant prepared EIR. The Executive Officer and the applicant will screen the proposals in an attempt to gain a

consensus on choosing the consultant. However, the Executive Officer is ultimately responsible for final selection of the consultant. The Commission will review the scope of work, consultant qualifications, contract cost, and all other aspects before authorizing a contract.

The applicant will be charged a fee to cover all contract and staff costs, to be deposited into a LAFCO trust fund. (Note: The contract will be between LAFCO and the consultant which will work solely at the Executive Officer's, not the applicant's, direction.) The Executive Officer will disburse the funds to the consultant at stages specified in the contract based on completion and performance. In addition to the contract costs, the fees charged will be based on actual staff time involved in, but not limited to: (1) Consultant selection including bid solicitation and review, submission of information to consultants, etc.; (2) Review of Draft EIR, corrections, additions, legal review by the Commission's legal counsel, etc.; (3) Compiling comments and reviewing responses to comments for preparation of Final EIR; and (4) Meetings with applicant, consultant and public regarding EIR preparation.

- Public Participation (CEQA Guidelines, Section 15201): Public participation is an essential part of the CEQA process. LAFCO includes provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency's activities. Such procedures include, whenever possible, making environmental information available in electronic format and on LAFCO's web site.

Interacting with the public is an important CEQA process that allows the public to voice its concerns about environmental issues and the potential effect of a project on the physical environment. Therefore, in order to ensure public involvement in LAFCO's CEQA process, the Commission—in addition to the requirements for public notification on the NOP and/or the Notice of Completion—will provide the public with the opportunity to participate in any meetings related to the EIR, whether through a scoping meeting (optional) to provide verbal or written comments on the content of the EIR and/or through the public hearing (required) on the certification of the Final EIR.

- Completion Notice (CEQA Guidelines, Section 15085): Because most LAFCO EIRs will require circulation through the State Clearinghouse, the default procedure is that as soon as the draft EIR is completed, a Notice of Completion ("NOC") must be filed with the California Governor's Office of Planning and Research, denoting the project's description and location, address where EIR copies are available, and the period which comments can be submitted.
- Agency/Public Review: At the time the NOC is sent, the Executive Officer shall provide public notice of the draft EIR's availability to all organizations, agencies and individuals who previously requested such notice; as well as publication in The Santa Cruz Sentinel (newspaper of general circulation) and/or local newspapers. The Executive Officer shall also distribute copies of the draft EIRs and requests for comments to all public agencies with jurisdiction within the project area; to

persons or organizations previously requesting such copies; to public libraries in the affected areas; as well as maintaining copies in the LAFCO and any Responsible Agency's offices (upon request). The Executive Officer may consult with any person who has special expertise in any environmental issue involved.

Review periods are not to be less than 30 days nor longer than 60 days from the date of the NOC except in unusual situations, per the Executive Officer's discretion. The review period for draft EIRs submitted to state agencies via the State Clearinghouse will be a minimum of 45 days. The last date for comment submittal shall be specified in the request for comments. A lack of response by that date constitutes a non-objection or "no-comment" by that particular party.

The sufficiency of the EIR per State CEQA Guidelines is the only issue to be addressed during this review. Questions/issues regarding the feasibility or desirability of the project itself shall only be considered by the Commission at the appropriate hearing, not integrated into the environmental review process. In instances where complex technical issues or disagreements among experts arise in the context of an EIR, the Executive Officer can convene a meeting of the County's or a local agency's Environmental Review Committee to provide a forum for a more thorough review of the EIR's adequacy.

- Adequacy: The Executive Officer will make preliminary (not appealable) determinations of the EIR's adequacy, utilizing all aspects of the public record; in turn making specific recommendations on adequacy to the Commission, for its findings, at the time the project is heard.
- Response to Comments on an EIR (CEQA Guidelines, Section 15088): The Executive Officer shall prepare a written response to all comments received during the comment period (and MAY respond to those received after the period): describing the disposition of issues, opinions or facts raised, project revisions or mitigation measures resulting from these comments, reasons for not accepting recommendations, all substantiated by factual information. The response to comments may be in the form of revisions to the EIR text, a separate section in the final EIR or as notes typed in the margins of the comment letters, depending on the event of the resulting revisions.
- Preparation of Final EIR (CEQA Guidelines, Sections 15089 and 15132): The Executive Officer/consultant will prepare a final EIR before the Commission makes a decision on the project. Project denial does not require certification of the Final EIR. Final EIR contents include: (1) The draft EIR and any revisions made to it in response to comments; (2) Comments and recommendations received on the draft EIR verbatim; (3) A list of persons, organizations and agencies commenting on the draft EIR; (4) LAFCO's responses to significant points raised during review and consultation; (5) Plus any other pertinent information. Final EIRs shall be available a minimum of 10 days prior to the Commission hearing on a project and shall be provided to any commenting parties 10 days prior to a Commission hearing on a project. The final EIR shall be submitted to the Commission with the project application and a mitigation measure monitoring plan/program (if necessary) for certification prior to the decision.

- Certification of Final EIR (CEQA Guidelines, Section 15090): Prior to approving a project for which an EIR has been prepared, the Commission shall certify that: (1) The final EIR has been completed in compliance with CEQA; (2) The final EIR was presented to the Commission which reviewed and considered it prior to approving the project; and, (3) The final EIR reflects the lead agency's independent judgment and analysis. If the Commission, through testimony or its own review of the data, finds that the environmental review is incomplete or the EIR does not adequately assess the full range of project impacts, it can refer it back to staff for revisions; deferring approval of the project until it can certify the amended final EIR. Under such circumstances, the Commission shall instruct staff to recirculate/not recirculate the amended EIR in accordance with the extent of requested revisions and as required by CEQA Guidelines, section 15088.5.
- Findings (CEQA Guidelines, Section 15091): The Commission cannot approve or carry out a project for which an EIR identifies one or more significant environmental effects, unless it makes one or more written findings for each significant effect, each reinforced by substantial evidence in the record. Such findings include: (1) Changes have been incorporated into the project which avoid or substantially reduce the significant environmental effect(s) identified in the final EIR, (2) Such changes are not within LAFCO's jurisdiction, but are within the responsibility and jurisdiction of another agency which has adopted such changes, or which can and should adopt such changes, or (3) Specific economic, social or other considerations make infeasible the mitigation measures or project alternatives identified in the final EIR.
- Approval (CEQA Guidelines, Section 15092): LAFCO shall not approve or carry out a project for which an EIR was prepared unless either: (1) The project, as approved, will not have a significant environmental effect, or (2) LAFCO has eliminated or substantially reduced all significant effects where feasible per State CEQA Guidelines, section 15091, and determined that any remaining significant effects found to be unavoidable per State CEQA Guidelines, section 15091, are acceptable due to overriding concerns described in CEQA Guidelines, section 15093.
- Statement of Overriding Considerations (CEQA Guidelines, Section 15093): When LAFCO approves a project that will have a significant effect on the environment that cannot be avoided or mitigated to a less than significant level, LAFCO shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The Commission shall balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable". The statement of overriding considerations shall be supported by substantial evidence in the record. The Commission's statement of overriding considerations should be included in the record of the project approval and so stated in the Notice of Determination.

- Notice of Determination (CEQA Guidelines, Section 15094): The Executive Officer shall file a Notice of Determination following each project approval for which an EIR was certified. The notice shall include: (1) The final EIR has been completed in compliance with CEQA; (2) The final EIR was presented to the Commission which reviewed and considered it prior to approving the project; (3) The final EIR reflects the lead agency's independent judgment and analysis; (4) Determination of any significant environmental effects; (5) Statement that an EIR was prepared and certified pursuant to CEQA; (6) Whether mitigation measures were made conditions of the project; (7) Whether findings were made per State CEQA Guidelines, section 15091; (8) Whether a statement of overriding considerations was adopted; (9) The address of the location of a copy of the final EIR and the project record; and (10) If different from the applicant, the identity of the person undertaking the project which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies or the identity of the person receiving a lease, permit, licenser, certificate, and other entitlement for use from one or more public agencies. The notice shall be filed with the Clerk of the County Board. If the project requires discretionary approval from a state agency, the notice shall also be filed with OPR State Clearinghouse.
- Disposition of Final EIR (CEQA Guidelines, Section 15095): The Executive Officer shall: (1) File a copy of the Final EIR with the Santa Cruz County Planning Department and the city, if applicable, where significant environmental effects may occur; (2) Include the Final EIR in all subsequent project administration; (3) Maintain a copy of the Final EIR as a permanent public record for the project; and (4) Require the applicant to provide a copy of the certified, final EIR to each Responsible Agency. Pursuant to adopted Commission policy, funding for the preparation of an EIR, fees for filing a Notice of Determination, and other related fees (i.e. notice and distribution requirements), are the responsibility of the applicant for the LAFCO action.



The Impact of Annexation on Natural Resource Management and Environmental Justice in the Jordan River Basin

Arava Institute for Environmental Studies
www.arava.org

July 2020



Introduction

Annexation will exacerbate the existential threats to the region from climate change and the ongoing conflict between Palestinians and Israelis.

In studies, research, and public diplomacy, the Arava Institute works to advance cross-border environmental cooperation, at the nexus of these two existential crises for the region.

The Arava Institute's environmental experts raise serious concerns regarding the damage that will be caused by Israeli annexation of parts of Area C to the human environment, the natural environment and the hope for future agreements which could lead to a just and peaceful resolution of the conflict.

Annexation, as proposed by the current Israeli government, is a unilateral act of land appropriation, which will annex Palestinian land but not people, further aggravating the power imbalance of the occupation and further endangering chances to reach a fair and just solution.

The Jordan River Basin (JRB) is a climate change hot spot. A study from Tel Aviv University predicts a shortening of the winter months of the eastern Mediterranean from 4 months to 2 months and lengthening of the summer by two months (Hochman et al. 2018). The winter is when the eastern Mediterranean receives the bulk of its annual precipitation which enables agriculture throughout the year. In a review of recently published studies on temperature, precipitation and other hydrological data, Tal (2019) raises the alarm of a shrinking Sea of Galilee, the water reservoir for riparian entities in the basin. With rising annual temperatures and a severe reduction in water resources, climate change will negatively impact the ability of farmers in the region to produce food (Behar & Kaplan 2019).

Annexation combined with the impacts of climate change in the region escalates environmental injustice by disenfranchising and isolating vulnerable communities in the annexed areas putting them at greater environmental risk. The proposed timing of annexation, as the world is still entrenched in a pandemic and at the beginning of a massive economic crisis, further exacerbates these environmental injustices. Economic, national, and environmental issues cannot be separated.

The new government's current path towards annexation risks extinguishing the ability of civil society organizations like the Arava Institute, to continue the critical cross-border environmental work carried out with Palestinian and Jordanian partners. This work is not part of the right/left political spectrum. It has received support from multiple Israeli governments over time and addresses the needs of the planet earth and the human beings who populate it.

Engaging in cross-border environmental cooperation will be impossible once the annexation process has begun and will lead to major environmental consequences.

On the Jordan River Basin

Specific environmental impacts of annexation include:

The Sea of Galilee is used as one of the two major reservoirs in which the state of Israel stores water for dry years. The second reservoir is within the coastal and mountainous aquifers. Wet-years, where the lake is replenished with substantial amounts of fresh water provide Israel with the option to decrease groundwater abstraction to restore the exploited groundwater reservoirs (aquifers). Filling the Sea of Galilee with fresh water helps to maintain its fragile aquatic ecology by diluting the salty water (and even brines) that continuously discharge into the lake via underwater spring. A year ago the water salinity in the lake reached a critical level that eliminated the use of the water unless it was mixed with other sources of fresh water such as desalinated water. The Sea of Galilee is routinely used for water supply to Israel's national water carrier and serves as emergency water storage. Therefore, the lake is one of the most important parameters in Israel's homeland security.

Regarding the amount of water which used to flow into the Lower Jordan River, Sea of Galilee contributed about 45%, on average but most of the water came from the eastern tributaries in Jordan and the Yarmouk River. Now, most of the Yarmouk water is consumed by Syria and Jordan. According to the peace treaty between Israel and Jordan, Israel is allowed to pump 20 M m³/year of water from the Yarmouk (less than 4% of its annual capacity), and in addition, Jordan is allocated 50 M m³/year from the Sea of Galilee (about 15% of the average rate of replenishment of the lake). While Israel has practically blocked almost all the flow of water from the Sea of Galilee into the lower Jordan River, Syria and Jordan exploit completely the Yarmouk River with almost no water discharge into the Lower Jordan River. In summary, most of the natural water sources of the Lower Jordan River are consumed by Syria and the Hashemite Kingdom of Jordan, while Israel must maintain sufficient water in the Sea of Galilee to guarantee the annual supply to Jordan (50 M m³/year) and to maintain the water quality and aquatic ecology. What is left is used by Israel.

As all the natural water resources in the Middle East, the Jordan River is a cross-border water resource. It is shared and exploited by Syria, Lebanon, Jordan, Palestine and Israel. Therefore, a sustainable solution for management of this precious and delicately balanced resource can only be achieved when all riparian parties are working in concert. Annexation threatens the ability of riparian parties to continue to work together even in the current limited framework. Annexation would make this limited level of cooperation between Jordan and Israel even more tenuous and in the end, threaten Israel's strategic water supplies.

Map of Jordan River Basin, (Source: UNDP/Green Cross)



On the Dead Sea

The sinkholes at the Dead Sea are getting worse and the issue suffers from government neglect on all sides. The Dead Sea basin and all that it has to offer is at risk of imminent loss. The only solution is a regional approach. The Dead Sea, which is the terminus of the Jordan River and Dead Sea Basin watershed, is a transboundary system. As described in the previous section, Israel, Jordan, Syria, Lebanon and Palestine are all riparian parties with legal water rights claims to the system. Climate change and over-abstraction of the upstream sections of the system are devastating the Lower Jordan River and the Dead Sea. The Dead Sea is now shrinking at an alarming rate of more than one meter per year. This unique ecological system, the only one of its kind in the world, and with huge economic importance for tourism and mineral extraction, is crumbling into a series of sinkholes. The countries in the region cannot sit idly by and watch this tragedy unfold; neither can they afford to simply give up on such an important resource and heritage to the people of the region and to the world. Regional cooperation is the only way forward to save the Dead Sea and the time to do so is running out.

The impact of climate change on the region's water resources is clearly evident. Since 1967, the Palestinians have been cut off from the Dead Sea while Jordan and Israel continue to exploit the Dead Sea's mineral resources and water inflow, with little regard for the ecological damage caused. Annexation acts as a threat multiplier by preventing any forward progress on resolving the environmental issues at the Dead Sea and removing any opportunity for Palestine, Israel, and Jordan to come to an agreement on a just and sustainable solution to managing this precious resource and world heritage site.

On the mountain and coastal aquifers

Groundwater is the most important source of freshwater for Israelis and Palestinians. Two thirds of the recharge area of the Mountain Aquifer lies within the West Bank and it is the only accessible source of water for the Palestinian Authority. The long term sustainability of this aquifer depends on managing pumping with recharge from rainfall. Climate change and increasing water demand are already causing over pumping and a decline in water quality. This is most acute in the Coastal Aquifer of the Gaza Strip where massive over pumping has led to significant declines in water quality making the water undrinkable and creating a humanitarian crisis that is only getting worse. The only way to minimize long-term degradation of both aquifers is through strong bilateral water agreements between Israel and the Palestinian Authority. The water allocations that were agreed to under the Oslo Accords are no longer sufficient to meet today's and future water needs. Unilateral annexation by Israel of territory in the West Bank will mean less access to groundwater for the Palestinians and will make the opportunity of bilateral water agreements almost impossible. Without water security there cannot be regional security, unilateral actions will threaten both.

Map of Mountain and Coastal Aquifers

Source: "Agreement to share Water between Israelis and Palestinians: The FoEME Proposal", EcoPeace 2012



On energy

Without any significant supply of natural resources for conventional production of energy, Palestine currently imports the vast majority of its electricity from Israel, leaving the Palestinian population completely dependent on Israel for its energy needs. The annexation of major sections of Area C in the West Bank will make it extremely difficult for any Palestinian development in the energy sector. Even if 3% out of the 61% of Area C was used for solar energy production Palestine could easily produce 3,000 MW substantially decreasing import reliance and decreasing the pressure on the Israeli energy sector. As the populations of both Palestine and Israel continue to grow and the hot dry summer season lengthens while the cool wet winter seasons shorten due to climate change, the pressure on the Israeli Electric Company to supply electricity for everyone in the region could become unsustainable. Further, the annexation may impede all electricity and fossil fuel import options from Jordan.

Annexation could even result in an increase in energy demand in the West Bank due to accelerated growth of Jewish settlements once Israel claims sovereignty. As with other natural resources, energy resources must be managed on a region-wide basis. The energy needs of populations who due to annexation will be living next to each other under very different legal jurisdictions will not be adequately supplied, leading to energy scarcity, and environmental injustice.

On food security

The Jordan Valley is a fertile strip of land that runs along the east and west banks of the Jordan River. The area is minimally populated and underdeveloped. As such, this area is the largest land reserve for future development of the West Bank. The Palestinians call the Jordan Valley a “food basket” as it constitutes 50% of total agricultural areas, currently producing 60% of the vegetables consumed in the West Bank. The importance of the Jordan Valley lies in the fact that it is a warm and fertile natural region which can be used for agriculture throughout the year and sits in the most important water basin in Palestine. The Jordan Valley forms over a quarter of the West Bank, with a population of about 65,000, including Jericho. The agricultural area constitutes 280 thousand dunam, 38.8% of the total area of the Jordan Valley. Palestinians control 50 thousand dunams, while Jewish settlers control 27 thousand dunams. (Btzelem)

According to the World Bank, the potential revenue from agriculture, were Palestinians given full access to this agricultural land, could be as much as a billion dollars a year. With an annual population growth rate of approximately 1.8% (CIA World Fact Book), the West Bank’s Palestinian population can be expected to double in the next 40 to 50 years putting even more pressure on water and land resources. Any scenario which takes into account this continued population growth rate must also recognize the growing pressure on food supplies. Annexation may deny access to thousands of Palestinian farmers to agricultural land which both Israel and Palestine rely on to feed the population in the region. If the food supply to the Palestinians is reduced due to the limitation of access or the expropriation of Palestinian lands, food security will be threatened

Summary of impacts of annexation on the environment

Unilateral approaches like annexation of parts of the West Bank and the Jordan Valley threaten to block any possible cooperative regional approach to solving the water, energy and food security issues which currently plague the region and will be exacerbated by the growing population and climate change.

Climate change is a cross-border global issue with serious natural resource and environmental justice implications. Only through cooperation, especially on issues of climate change adaptation, can the region ensure ecosystem integrity, sustainable natural resource management and the well-being of the most vulnerable communities, already disadvantaged by limited resources and poverty. As the world and the region are trying to recover from a devastating pandemic and facing an existential threat from rising average annual global temperatures, leaders of Israel must ask themselves if this is the time to attempt to fulfill the dreams of a small minority of Israeli citizens while ignoring the needs of the majority of Israeli citizens and our neighbors for a future with hope.

Contributors to this brief:

Prof. Eilon Adar, Professor Emeritus, Ben Gurion University; Director, Board of Directors, Arava Institute

Dr. Clive Lipchin, Director, Center for Transboundary Water Management, Arava Institute

Dr. Miri Lavi-Neeman, Director, Center for Arid Socio-Ecology, Arava Institute

Dr. Tareq Abu Hamed, Academic Director and Director, Center for Renewable Energy and Energy Conservation, Arava Institute

David Lehrer, Director, Arava Institute

Eliza Mayo, Deputy Director, Arava Institute

References

Behar, G., M. Kaplan. 2019. "Will Israel be able to feed itself? Thoughts about Israeli agriculture in the shadow of global climate change." *Gideon Behar Newsletter* Feb 20th, 2019.

Btzelem: https://www.btselem.org/jordan_valley

CIA World Fact Book: <https://www.cia.gov/library/publications/resources/the-world-factbook/index.html>. accessed July 1st, 2020.

Hochman, A., T. Harpaz, H. Saaroni, P. Alpert. 2018. "The seasons' length in 21st century CMIP5 projections over the eastern Mediterranean." *Int. J. Climatol.* 38: 2627–2637.

Niksic, Orhan, Nasser Eddin, Nur, and Cali, Massimiliano. "Area C and the Future of the Palestinian Economy" Washington, D.C. A WORLD BANK STUDY, <http://documents1.worldbank.org/curated/en/257131468140639464/pdf/Area-C-and-the-future-of-the-Palestinian-economy.pdf>

Tal, A. 2019. "The implications of climate change driven depletion of Lake Kinneret water levels: the compelling case for climate change-triggered precipitation impact on Lake Kinneret's low water levels." *Sci. Total Environ.* 664: 1045–1051.

World Bank Report No. AUS2922 WEST BANK AND GAZA Area C and the Future of the Palestinian Economy October 2, 2013 Poverty Reduction and Economic Management Department Middle East and North Africa <http://documents1.worldbank.org/curated/en/137111468329419171/pdf/AUS29220REPLAC0EVISION0January02014.pdf>

The Arava Institute for Environmental Studies
Kibbutz Ketura D.N. Hevel Eilot 8884000, Israel
+972-8-6356618 • info@arava.org
www.arava.org