

MENDOCINO

Local Agency Formation Commission

Ukiah Valley Conference Center | 200 South School Street | Ukiah, California 95482
Telephone: (707) 463-4470 | E-mail: eo@mendolaferco.org | Web: www.mendolaferco.org

COMMISSIONERS

Tony Orth, Chair

Brooktrails Township CSD

Scott Ignacio, Vice-Chair

Point Arena City Council

Gerald Ward, Treasurer

Public Member

Matthew Froneberger

Regular Special District

Gerardo Gonzalez

Willits City Council

Glenn McGourty

County Board of Supervisors

Maureen Mulheren

County Board of Supervisors

Jenifer Bazzani, Alternate

Ukiah Valley Fire District

John Haschak, Alternate

County Board of Supervisors

Mari Rodin, Alternate

City Member

Richard Weinkle, Alternate

Public Member

STAFF

Executive Officer

Uma Hinman

Analyst

Larkyn Feiler

Commission Clerk

Kristen Meadows

Counsel

Scott Browne

REGULAR MEETINGS

First Monday of each month
at 9:00 AM in the
Mendocino County
Board of Supervisors
Chambers
501 Low Gap Road, Ukiah

Policies and Procedures Meeting A G E N D A

April 13, 2021, 10:00 a.m.

Meeting held remotely via Zoom due to pandemic

To join meeting: <https://mendocinocounty.zoom.us/j/85402574492>

Important Notice

Pursuant to State Executive Order N-29-20 pertaining to the convening of public meetings in response to the COVID-19 pandemic, effective March 20, 2020, the Mendocino Local Agency Formation Commission (LAFCo) meetings will be conducted remotely and will not be available for in person public participation until further notice.

Submit **written comments** electronically to eo@mendolaferco.org by 9:00 a.m. on the day of the meeting. In the subject line, specify the agenda item number for your comments, "To be read aloud" if desired, and in the body of the email include your name. If to be read aloud, please keep your comments to 500 words or less. All written comments will be provided as soon as feasible to the Commission and posted on the [meeting documents](#) page of the website.

Provide **verbal comments** via teleconference with the information provided on the [website](#). Please pre-register by email to eo@mendolaferco.org by 9:00 a.m. the day of the meeting. In the subject line, specify the agenda item number for your comments, "...Live", and your name (Example: Item 2b Public Comment Live, John Doe). Participants will also receive instructions for participation in the meeting. Each participant will have three minutes to provide comments related to the agenda item.

1. CALL TO ORDER & ROLL CALL

Commissioners Froneberger, Gonzalez, and Mulheren

2. MATTERS FOR DISCUSSION & POSSIBLE ACTION

2a) Selection of a Committee Chair

The Committee members will select a Chair.

2b) Approval of the December 28, 2020 Policies & Procedures Committee Minutes

2c) Policy Development to Address Indemnity Limitations

Develop a policy recommendation to the Commission in response to a recent court case limiting LAFCo's authority to require indemnification agreements for applications.

2d) Electronic Signature Policy Development

Consider a draft electronic signature policy, directing staff to revise as needed and recommend to the Commission for consideration.

2e) Policy Development for Spheres of Influence

Discuss next steps in the development of a policy clarifying Commission processes for sphere of influence updates.

2f) Other Policy & Procedure Update Discussions and/or Recommendations

Opportunity for Committee to discuss additional policy and/or procedure topics and topics for future meetings.

3. INFORMATION AND REPORT ITEMS

3a) Executive Officer Report (verbal)

4. CLOSED SESSION

4a) Conference with Legal Counsel – Potential for Exposure to Litigation: 1 case

Pursuant to Government Code §54956.9(d)(2), the Commission will hold a closed session for a conference with Legal Counsel regarding potential exposure to litigation.

ADJOURNMENT

The next Regular Commission Meeting is scheduled for
May 3, 2021
Meeting to be held remotely via Zoom and teleconference due to pandemic.

MENDOCINO

Local Agency Formation Commission

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Agenda Item 2b

COMMISSIONERS

Carre Brown, Chair
County Board of Supervisors

Tony Orth, Vice Chair
Brooktrails Township CSD

Gerald Ward, Treasurer
Public Member

Gerardo Gonzalez
Willits City Council

Vacant
Special District Member

Scott Ignacio
Point Arena City Council

John McCowen
County Board of Supervisors

Jenifer Bazzani, Alternate
Ukiah Valley Fire District

Will Lee, Alternate
Fort Bragg City Council

Richard Weinkle, Alternate
Public Member

John Haschak, Alternate
County Board of Supervisors

STAFF

Executive Officer
Uma Hinman

Analyst
Larkyn Feiler

Commission Clerk
Kristen Meadows

Counsel
Scott Browne

REGULAR MEETINGS

First Monday of each month
at 9:00 AM in the
Mendocino County
Board of Supervisors
Chambers
501 Low Gap Road, Ukiah

Draft Minutes Policies and Procedures Meeting

December 28, 2020; 11:00 a.m.
Meeting held remotely via Zoom due to pandemic.

1. CALL TO ORDER & ROLL CALL

Meeting was called to order at 11:02 p.m. by Chair Ward.

Members present: Commissioners Gerald Ward, Gerardo Gonzalez and John McCowen
Staff present: EO Uma Hinman, Analyst Larkyn Feiler, Counsel Scott Browne

2. MATTERS FOR DISCUSSION & POSSIBLE ACTION

2a) Approval of the November 24, 2020 Policies & Procedures Committee Minutes

Upon motion by Commissioner Gonzalez and second by Commissioner McCowen, the minutes for November 24, 2020 were approved by unanimous vote.

Ayes: Commissioners Gonzalez, McCowen, and Ward.

2b) Policy Development for Spheres of Influence

EO Hinman presented the staff report, which included revisions to proposed draft Sphere of Influence (SOI) policy language based on meetings with the Cities of Ukiah, Fort Bragg, and Willits and the Ukiah Valley Sanitation District (UVSD), and noted that written comments were received from the Cities of Fort Bragg and Ukiah and were distributed to the Committee members prior to the meeting.

Chair Ward opened the meeting for Public Comments. John Sharp, Attorney representing UVSD, inquired about the process for establishing a legally binding agreement under Policy 10.1.3g, the MSR costs under Policy 10.1.3f, and whether the policies give an unfair advantage to agencies that can pay over agencies that cannot. Commissioner McCowen noted that the intent is for the agency requesting SOI expansion to pay for any additional costs and Counsel Browne noted a recent example with the City of Ukiah MOU and clarified that LAFCo can charge fees to process applications in any case.

Sage Sangiacomo, City Manager for the City of Ukiah, commented that the policy is not ready for Committee approval, LAFCo staff has not provided written responses to City comments provided for the November Committee meeting, the policy as written will have extreme unintended consequences, impact the cities, and hamper LAFCo's ability to plan for orderly development, a high level of CEQA review is appropriate at the project level not the SOI Update level, and the proposed changes warrant full analysis to ensure good policies are achieved. Commissioner McCowen expressed concern that a high level of CEQA review for SOI Updates could discourage agencies from coming forward to expand their sphere and supported the new Commission addressing the proposed policy development to allow more time and limit unintended consequences.

Chair Ward and Commissioner Gonzalez agreed with Commissioner McCowen, and noted that the purpose was to complete policy development with the institutional knowledge of the outgoing Commissioners. The Committee provided staff direction to postpone the item and continue to engage with stakeholders to refine the SOI policies and to provide an update at the January 4, 2020 Regular Commission meeting.

Michael G. Colantuono of Colantuono, Highsmith & Whatley, PC and Andrea A. Matarazzo of Pioneer Law Group, LLP, subject matter experts in LAFCo and CEQA and representing the Cities of Fort Bragg and Ukiah provided a brief summary of legal concerns represented in their written comments provided to the Committee.

Wing-See Fox, General Manager for the UVSD, agreed with the comments made by the other agencies and requested to continue to receive updates on the policy development process.

Tabatha Miller, City Manager for the City of Fort Bragg, expressed interest in remaining engaged in the process and to find middle ground.

Dusty Duley, Community Development Director for the City of Willits, commented that the outdated sphere definition was concerning, it was unclear from the policy what new costs would be paid by the cities, the policy language could be interpreted to require a higher level of CEQA review than necessary creating unintended consequences, and inquired about whether an SOI would become outdated if no changes were made during a LAFCo-initiated SOI review.

Commissioner McCowen inquired about to what extent the Commission could rely on the 1984 SOI for the City of Ukiah in processing current applications. Michael G. Colantuono responded that an SOI is in place until updated. Counsel Browne clarified that LAFCo has the ability to define an outdated sphere consistent with the CKH. Commissioner McCowen inquired about whether an SOI Update triggers a high level of CEQA review. Michael G. Colantuono responded that usually CEQA review is done in conjunction with a land use entitlement process, tiered from a General Plan EIR, or found exempt from CEQA and noted that a Lead Agency is the agency that acts first.

The Committee thanked everyone in attendance and LAFCo staff for their time and effort during the holiday season working on the SOI policy development and requested that agencies provide written comments in advance of the January Regular Commission meeting.

2c) Other Policy & Procedure Update Discussions and/or Recommendations

EO Hinman noted that the Electronic Signature Policy is still pending.

3. INFORMATION AND REPORT ITEMS

3a) Executive Officer Report (verbal)

EO Hinman noted that this was the last meeting with outgoing Commissioner McCowen and thanked him for his dedicated and distinguished service.

ADJOURNMENT

There being no further business, the meeting adjourned at approximately 12:04 p.m.

MENDOCINO
Local Agency Formation Commission
Staff Report

DATE: April 13, 2021
TO: Mendocino Local Agency Formation Commission Policies & Procedures Committee
FROM: Uma Hinman, Executive Officer
SUBJECT: **Policy Development to Address Indemnity Limitations**

STAFF RECOMMENDATION

Consider options and provide direction to staff to address the conditions resulting from the recent court case that limits LAFCo authority to require indemnification for applications.

BACKGROUND

At its April 5, 2021 meeting, the Commission directed the Policies & Procedures Committee to review the current Indemnity Agreement in light of the recent *San Luis Obispo LAFCo v. City of Pismo Beach* case (the SLO case) and develop a new or revised Indemnity Policy accordingly. While LAFCo may not have the authority to condition acceptance of an application upon requiring an applicant to indemnify LAFCo, there may be other alternatives to address the issue that are consistent with the SLO case.

Staff solicited proposed solutions from other LAFCo Executive Officers throughout the state and has worked with Legal Counsel to develop four options for the Committee's consideration and direction.

- Attachment 1 Draft Legal Defense Policy Options
- Attachment 2 Draft Voluntary Indemnification Agreement
- Attachment 3 Legal Counsel's Memo to LAFCos, March 15, 2021

Attachment 1

The following options are presented for the Policies & Procedures Committee's consideration and direction. Please understand that these are by no means exhaustive of all alternatives. They simply represent what Staff was able to come up with in talking with other LAFCo's.

Option 1: Continue with current requirement and hope for the best

In consulting with other LAFCo's, many are taking no action with respect to the San Luis Obispo LAFCo v, City of Pismo Beach decision (SLO case). They point out that the decision is not final and may be appealed to the California Supreme Court. They argue that are very seldom sued, or they have adequate reserves, and the risk that the indemnification will not be enforceable is a risk they are willing to take.

Option 2: Require a deposit or bond for legal defense fees

The SLO case focuses on the fact that the indemnification was a requirement for payment after the administrative process was completed. The Court found there was no statutory authority to require such a payment. This leaves open the possibility of requiring a payment in the form of a deposit or bond as part of the "fees" allowed to be charged for the administrative process. Under this option, applicants shall either post a deposit for an amount deemed adequate by the Commission to cover possible defense costs, or provide a bond in that amount. Staff suggest that the amount be at least \$100,000. The deposit will be held in an interest-free account, or the bond held by LAFCo, until all applicable statutes of limitations had passed. If no lawsuit is filed, the deposit would be refunded or the bond commitment terminated. If a lawsuit is filed, the deposit money or bond money would be applied to LAFCo defense costs. Use of the deposit or bond would be for Mendocino LAFCo or any member of its commission, staff, contractors and/or agents that may be named as a party in any litigation or administrative proceeding in connection with the Applicant's proposal or request for services. Funds would be used to reimburse LAFCo for 1) all reasonable expenses and attorneys fees in connection with the defense of LAFCo and 2) any damages, penalties, fines or other costs imposed upon or incurred by LAFCo. Applicant agrees that LAFCo shall have the right to appoint its own counsel to defend it and conduct its own defense in the manner it deems in its best interest, and that such actions shall not relieve or limit Applicant's obligations to reimburse defense costs. Provided however, that LAFCo shall not settle with any plaintiff without consulting with arbitrator prior to settling.

Option 3: Self-insure either through reserves or legal defense insurance or bond

LAFCo can choose to self-insure for any potential legal fees and other costs, penalties and fines. In such case LAFCo can either maintain reserves sufficient to at least fund one year's defense costs (at least \$100,000, in counsel's opinion) or seek to obtain some form of insurance or bond to reimburse LAFCo for such costs. Whether such insurance or bond can be obtained at reasonable cost is uncertain at this time. If such insurance\bond is available, the cost can legitimately be added to application fees charged all applicants so that LAFCo is reimbursed for such cost.

Option 4: Voluntary Indemnification Agreement

As determined in the SLO case, LAFCo may not condition acceptance of an application upon requiring an applicant to indemnify LAFCo because LAFCo has a statutory duty to process the application. But that case does not limit LAFCo authority to enter into contracts with its applicants provided they are voluntary and there is genuine consideration for the contract.

LAFCo has complete discretion whether to defend any lawsuit that is filed to challenge its decisions. Consequently, LAFCo may ask applicants to voluntarily sign an indemnification Agreement, in exchange for LAFCo agreeing to provide them with greater assurance that LAFCo will defend its decision in the event of legal challenge. Such an agreement would be voluntary. It could not be required as a condition of processing the application. Nevertheless, it is likely that most applicants would want LAFCo to defend the decision and would sign the agreement.

A draft of proposed voluntary agreement is attached as an exhibit to this report.

Attachment 2

DRAFT Voluntary Indemnification Agreement

LAFCo may not condition acceptance of an application upon requiring the Applicant to indemnify LAFCo. However, LAFCo has complete discretion whether to defend any lawsuit that is filed to challenge its decisions. With its limited budget, LAFCo will usually be reluctant to allocate resources to defend challenged decisions. If the Applicant desires to assure that LAFCo will consult with Applicant before determining how to proceed on a legal challenge and increase the likelihood that LAFCo will defend its decision on Applicant's proposal, Applicant may enter into the following voluntary contractual agreement to indemnify LAFCo in the event of legal challenge:

1. FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged. The Applicant shall defend, indemnify and hold harmless, LAFCo, its agents, officers, attorneys, and employees from any claim, action, or proceeding brought by a third party, the purpose of which is to attack, set aside, void, or annul LAFCo's decision with respect to Applicant's proposal or any required findings or determinations under CEQA made as part of that decision. This indemnification obligation shall include, but not be limited to, damages, costs, expenses, attorney's fees, or expert witness fees that may be asserted by any person or entity other than the applicant, arising out of or in connection with LAFCo's approval of the Applicant's proposal, whether or not there is concurrent, passive, or active negligence on the part of LAFCo, its agents, officers, attorneys, employees and contractors.
2. Applicant agrees that LAFCo shall have the right to appoint its own counsel to defend it and conduct its own defense in the manner it deems in its best interest subject to the provisions of this agreement, and that such actions shall not relieve or limit Applicant's obligations to indemnify and reimburse defense costs.
3. In exchange for such indemnity, LAFCo agrees to the following:
 - a. To immediately notify the Applicant of any litigation or administrative proceeding with respect to the Applicant's application in which LAFCo is named as a party.
 - b. In the event that the Applicant is not joined in the action or proceeding, LAFCo agrees to support a motion by the Applicant to intervene in the action or proceeding.
 - c. To consult with Applicant before making any decision whether to defend the legal challenge. If Applicant desires to defend the case and confirms in writing its commitment to reimburse LAFCo for its defense costs and provides a deposit for such costs as LAFCo shall reasonably determine, LAFCo will proceed to defend unless it has reasonable cause not to do so.
 - d. If a determination is made to defend the action, LAFCo counsel will consult and reasonably cooperate with Applicant's counsel in the defense of the action.
 - e. LAFCo shall not enter into any settlement of all or a part of the action without consulting with Applicant.

APPLICANT:

Dated: _____, 2021

By: _____
Authorized Officer

Dated: _____, 2021

By: _____
LAFCo Chair

Attachment 3

LAW OFFICES OF P. SCOTT BROWNE

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MARSHA A. BURCH

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March 16, 2021

Memorandum re Decision in *San Luis Obispo LAFCo v. City of Pismo Beach*

Dear LAFCo Staff and Commissioners:

This memorandum is to alert you to a very recent case (March 3, 2021) out of the Second District Court of Appeal which may have significant implications for how LAFCo's handle indemnification for fees incurred in legal challenges to LAFCo actions. The case is *San Luis Obispo LAFCo v. City of Pismo Beach, et.al.* 2021 WL 803740.

The decision in that case is not yet final. It could be appealed to the California Supreme Court or it could be determined to decertify it for publication. In the latter case, it would not become part of the reported caselaw. However, out of an abundance of caution, I think it is important you are aware of it as there is a significant possibility it will become law.

In that case, San Luis Obispo LAFCo (SLO LAFCo) sued the City of Pismo Beach and the developer for its \$400,000 in attorney's fees incurred in successfully fighting the Defendants challenge to its denial of an annexation to the City. The claim for fees was based on the indemnification agreement signed by the City and developer as applicants for the annexation.

Defendants challenged LAFCo's right to attorney's fees on a variety of grounds. Their primary focus was on the validity of the requirement they indemnify LAFCo for their own suit challenging LAFCo's action. They argued this was a basic violation of due process and their right to petition for redress.

The Court of Appeal did not, however, limit its decision to this one situation. Rather the Court held that an agreement to pay indemnification requires consideration. LAFCo has a statutory duty to process applications, so absent statutory authority, it cannot require indemnification as a condition for processing an application. The Court found that the existing statutory authority for LAFCos to charge fees, Gov't C § 56383 of the Cortese-Knoz-Hertzberg Local Government Reorganization Act of 2000 (CKH) only applied to costs associated with the administrative process and ended once a certificate of completion was filed. Costs incurred after the completion of the administrative process were not authorized by §56383. Hence there was no authority to require payment of the fees incurred after completion of the administrative process.

LAFCo argued that CKH Section 56107 requires liberal construction of the statutes. The Court rejected this argument as liberal construction cannot prevail against the express language of the 56383. It also rejected an argument that LAFCo had implied powers to impose an indemnification agreement. It rejected this argument because Code of Civil Procedure §1021 limits award of attorney's fees to those situations where they are specifically authorized by statute or by the agreement between the parties. Here there is no statutory authority and no valid agreement to pay the fees.

Memo re San Luis Obispo LAFCo v. City of Pismo Beach

March 16, 2021

Page 2

If this case becomes reported law, it is likely to upset the present practice of requiring indemnification agreements as part of the LAFCo application. Such agreements would be challenged based on this case, and the outcome highly uncertain.

Without enforceable indemnification agreements, LAFCo would have to plan on funding the defense of any litigation out of its own reserves. If it has inadequate reserves, then it must either borrow from the County if permitted by the Board of Supervisors or curtail its defense.

Other alternatives being explored are 1) to require the applicant to post a deposit for future attorney's fees at time of application, or 2) require the applicant to post a bond in lieu of a deposit. In either case, the burden on the applicant would be significantly increased.

I will keep you posted as this case progresses and we will look to modify LAFCo application procedures if necessary.

Please let me know if you have any questions.

Sincerely

P. Scott Browne
LAFCo Counsel

**MENDOCINO
Local Agency Formation Commission
Staff Report**

DATE: April 13, 2021
TO: Mendocino Local Agency Formation Commission Policies & Procedures Committee
FROM: Uma Hinman, Executive Officer
SUBJECT: Draft Electronic Signature Policy

STAFF RECOMMENDATION

Consider proposed language for an electronic signature policy, directing staff to revise as needed and recommend to the Commission for consideration.

BACKGROUND

At its August 13, 2020 meeting, the Executive Committee directed development of an electronic signature policy to the Policies & Procedures Committee.

The intent of the Electronic Signature (eSignature) Policy is to increase productivity and ensure convenient, timely and appropriate access to LAFCo information by using electronic signature technology to collect and preserve signatures on documents quickly, securely, and efficiently. In addition to increasing productivity and efficiency, this Policy will reduce the consumption and storage of paper documents and the maintenance and supply of printers. The need for such a policy has become more evident with the past year's limitations on physical interactions to obtain signatures due to the COVID restrictions.

This Policy is intended to establish when electronic signature technology may replace a hand-written signature, with the goal of encouraging the use of paperless, electronic documents whenever appropriate and allowed by law. The Policy will apply to all signatures used in processing various LAFCo documents and assumes the signer has been given the authority to sign as determined by the Commission. While the use of electronic signatures is suggested and encouraged, this Policy does not require the use of electronic signatures, nor can LAFCo mandate that any third party signing a document use electronic signature.

Attached is a draft electronic signature policy for the Committee's consideration.

Attachment Draft Electronic Signature Policy

DRAFT ELECTRONIC SIGNATURES POLICY

This Policy applies to documents requiring a signature of any person where the signature is intended to show authorship, approval, authorization, or certification, as allowed by law. It is the Policy of the Mendocino LAFCo to allow the use of electronic signatures in all internal and external activities, documents, and transactions where it is operationally feasible to do so, where existing technology permits, and where it is otherwise appropriate. In such situations, affixing an electronic signature to the document in a manner consistent with this Policy shall satisfy Mendocino LAFCo's requirements for signing a document.

While the use of electronic signatures is an option, this Policy does not require any staff or Commissioner to use electronic signatures, nor can LAFCo mandate that any third party signing a document use electronic signature.

1. Types of documents. This Policy is intended to broadly permit the use of electronic signatures. Examples of common types of documents are resolutions of the Commission, contracts, legislative support letters, memorandums, and correspondence. The Executive Officer will confirm with Legal Counsel on a case-by-case basis to determine where applicable laws permit an electronic signature to be used.
2. Requirements of eSignature. The use of electronic signatures is permitted and shall have the same force and effect as the use of a "wet" or manual signature if all the following criteria are met:
 1. The electronic signature is unique to the person using it.
 2. The electronic signature is capable of verification.
 3. The electronic signature is under the sole control of the person using it.
 - a) Email notifications requesting electronic signatures must not be forwarded.
 - b) These requirements prohibit the use of proxy signatures.
 4. The electronic signature is linked to the data in such a manner that if the data is changed after the electronic signature is affixed, the electronic signature is invalidated.
3. Documents involving other parties. In the case of contracts or transactions which must be signed by outside parties, each party to the agreement must agree in advance to the use of an electronic signature. No party to a contract or other document may be forced to accept an electronic signature; they must be permitted to decide either way. Such consent may be withdrawn by the other party at any time such that future documents must be signed in hardcopy format. When a document is electronically signed by all parties, Mendocino LAFCo will provide a copy of the electronically-signed document to the other parties in an electronic format that is capable of being retained and printed by the other parties.
4. eSignature Solution Providers. Acceptable technologies and eSignature providers shall be consistent with current state legal requirements and industry best practices to ensure the security and integrity of the data and the signature. The eSignature providers shall be on the *Approved List of Digital Signature Certification Authorities* certified by the California Secretary of State for use by public entities. LAFCo may accept other electronic signature methods provided they comply with all other requirements set forth in this policy.

MENDOCINO
Local Agency Formation Commission
Staff Report

DATE: April 13, 2021
TO: Mendocino Local Agency Formation Commission Policies & Procedures Committee
FROM: Uma Hinman, Executive Officer
SUBJECT: Policy Development for Spheres of Influence

STAFF RECOMMENDATION

Advise staff on next steps for outreach to agencies and development of the proposed Sphere of Influence policies.

BACKGROUND

On November 24 and December 28, 2020, the Policies & Procedures Committee met to review proposed policy language regarding spheres of influence and develop recommendations to the full Commission. On December 28, 2020, the Committee directed staff to bring the draft policy forward at the January 4, 2021 meeting for the Commission to consider adoption of the proposed SOI policies. Direction from the Commission during its January meeting focused on budget considerations to assist staff in development of the Fiscal Year 2021-22 Budget and Work Plan.

Agencies participating in the public meetings have consistently requested additional outreach regarding the proposed changes to the Sphere of Influence policies. Staff is requesting discussion with the Committee regarding outreach and next steps in policy development.

Attachment January 4, 2021 Staff Report for the Regular Commission Meeting

**MENDOCINO
Local Agency Formation Commission**

Staff Report

DATE: January 4, 2021
TO: Mendocino Local Agency Formation Commission
FROM: Uma Hinman, Executive Officer
SUBJECT: **SOI Policy Update and Work Plan Budget Discussion**

RECOMMENDATION

Receive informational report from staff regarding the Sphere of Influence policy development process and discuss options for the upcoming Fiscal Year 2021-22 Work Plan budget.

BACKGROUND

Staff Direction

On December 7, 2020, the Commission directed staff to bring an item forward at the January 4, 2021 meeting for the Commission to consider adoption of the proposed SOI policies, once further vetted through the Policies and Procedures Committee.

On December 28, 2020, the Policies & Procedures Committee reconvened to discuss the revised SOI policies after LAFCo staff conducted outreach with interested agencies. The meeting was well attended by staff and legal representatives of multiple agencies including the Cities of Ukiah, Fort Bragg, Willits, the Ukiah Valley Sanitation District, and Russian River Flood Control District.

The Committee provided staff direction to postpone the item to allow more time to continue to engage with stakeholders, further refine the SOI policies, and limit unintended consequences. The Committee also directed staff to provide an update at the January 4, 2021 Regular Commission meeting.

Policy Intent

The intent of the proposed policy changes was to tap into the institutional knowledge of the outgoing Commissioners to put into written policy the current Sphere of Influence (SOI) practices of the Commission. The proposed policy changes were intended to establish uniform treatment and ensure cost recovery from agencies requesting SOI expansion that result in additional costs associated with increased analysis and necessary CEQA review in an effort to keep apportionment fees for all agencies low.

Budget Implications

The level of concern from stakeholders regarding the SOI policy development has resulted in more robust dialogue and will likely lead to better policy development. However, it is important to report that it is also resulting in a large amount of limited staff time dedicated to the effort. It is also noteworthy that smaller local agencies that would pay more without cost recovery policies have not been present in the Committee meetings so far.

In continuing the SOI policy development process, if the Commission decides that agencies requesting SOI expansion should not be required to assist in cost recovery, there will be associated budget

implications. Without cost recovery, the Commission would likely need to increase apportionment fees to carry out its statutory mandate to prepare MSR/SOI Updates and CEQA review in a timely manner.

Discussion of the SOI policy fiscal implications is timely as we commence the Fiscal Year 2021-22 budget development process and will weigh heavily into upcoming work plan budget and schedule considerations. LAFCo staff is seeking guidance from the Commission to provide a roadmap to support future decisions.

Current Practice

The current practice of the Commission has been to establish a coterminous sphere during the MSR/SOI Update process, unless an agency requests a non-coterminous sphere and assumes the costs associated with CEQA review, and prepare MSR/SOI studies in-house at lower staff rates. This approach has allowed the Commission to keep apportionment fees low. As a result, LAFCo does not have budget sufficient to prepare a non-coterminous SOI Update for growth-inducing or multi-service agencies with CEQA review beyond an exemption within a single fiscal year.

Work Plan

The primary revenue source for the LAFCo annual budget is apportionment fees of member agencies that funds basic staff services, agency operations, and MSR/SOI studies (Work Plan). The current Work Plan budget line item (\$42,500) accounts for approximately a quarter of the overall budget (\$160,248).

Pursuant to GOV §56425(g), on or before January 1, 2008, and every five years thereafter, the commission shall, as necessary, review and update each sphere of influence. There is not consensus in the LAFCo community regarding this statutory requirement. Some LAFCo's interpret this legislation as requiring an SOI Update every five-years for every agency, and some interpret it to mean that once the first-round SOI Update is completed, subsequent SOI Updates can occur as needed on a five-year basis.

Further, the following existing LAFCo Policy 10.1.3 clarifies that SOIs for municipal service providers be reviewed every five years and SOIs for non-municipal service providers be updated as necessary.

10.1.3 SPHERE UPDATES

In updating spheres of influence, the Commission's general policies are as follows:

- a) The Commission will review all spheres of influences every five years for each governmental agency providing municipal services. Municipal services include water, wastewater, police, and fire protection services.*
- b) Sphere of influence changes initiated by any agency providing a municipal service shall generally require either an updated or new service review unless LAFCo determines that a prior service review is adequate.*
- c) Spheres of influence of districts not providing municipal services including, but not limited to, ambulance, recreation, hospital, resource conservation, cemetery, and pest control shall be updated as necessary.*

Mendocino LAFCo strives to prepare MSR/SOI Updates for every agency on a five-year cycle; however, due to budget limitations this timeframe can be difficult to achieve.

The 5-Year Rolling Work Plan is a schedule and estimated cost plan for conducting MSR/SOI Updates for local agencies under LAFCo jurisdiction (this does not include school districts). The Rolling Work Plan is designed to allow for flexibility in addressing unforeseen changes in the needs and circumstances of local agencies and to shift priorities accordingly during the year, and can result in a domino effect of pushing the studies of other agencies to subsequent years.

The current 5-Year Rolling Work Plan for Fiscal Year 2020-21 was intended to cover MSR/SOI study costs for the City of Ukiah (two years), Ukiah Valley Sanitation District (two years), County Service Area 3, Ukiah Valley Fire Protection District, and Covelo Community Services District. Other upcoming agency studies tentatively scheduled for Fiscal Year 2021-22 include the City of Point Arena, Anderson Valley

Community Services District, and 14 water/wastewater agencies in the County. This is an aggressive schedule that has been focused primarily on the targeted five-year schedule and will need to be modified this coming budget cycle.

CEQA Review

There is not consensus in the LAFCo community regarding the appropriate level of CEQA review for changes in SOIs. Some approaches include: relying primarily on CEQA exemptions and deferring further CEQA review until the individual project level; completing CEQA review in conjunction with a land use entitlement process or General Plan Update process as a Responsible Agency; tiering from a General Plan EIR; preparing an Initial Study and Negative Declaration or Environmental Impact Report (EIR) for SOI Updates; and fully considering the reasonably foreseeable indirect impacts of facilitating annexation and the provision of municipal services in an Initial Study at the time of proposed sphere change.

Not all CEQA approaches work in all circumstances and the level of controversy involved in a specific sphere change may result in a higher level of CEQA review than anticipated. Also, the Lead Agency for CEQA can differ depending on which agency is first to act on a project. For a LAFCo-initiated SOI Update that is independent of a change of organization application, land use entitlement permit, and/or General Plan Update, LAFCo would likely be the Lead Agency and responsible for the costs of CEQA review.

The LAFCo-initiated periodic SOI Update process is not the only time a local agency can request a sphere change. A local agency may apply to LAFCo at any time for a sphere amendment, which typically is associated with a boundary change, and the applicant assumes the Lead Agency role for CEQA review unless the sphere change occurs in conjunction with another discretionary action (e.g., subdivision map, use permit).

The estimated cost of CEQA review for the upcoming SOI Updates is project specific and cannot be known until the SOI Update is undertaken. As preliminary information, our current Fee Schedule requires the following initial deposit for CEQA review of applications: \$100 for a Statutory/Categorical Exemption, \$5,000 for a Negative Declaration/Mitigated Negative Declaration, and \$20,000 in conjunction with payment schedule for an Environmental Impact Report (EIR). The Fee Schedule specifies that these activities are deposits and are billed at cost to the agency. It should be noted that EIRs can range upwards of \$100,000 and more for a project, depending on the scope of analysis.

Options

The following options have been developed to stimulate discussion and guide next steps, but are not intended to be an exhaustive list of options or limit innovative thinking.

1. Continue SOI policy development for cost recovery of non-coterminous SOIs and CEQA review.
2. Develop multiple apportionment fee scenarios with a range of cost increases for the Fiscal Year 2021-22 budget development process.
3. In pursuing the SOI policy development, perform more outreach to smaller single-service agencies that would pay more without cost recovery policies.
4. Research the estimated CEQA costs for upcoming SOI Updates to identify the funding gap.
5. Continue discussions with agencies regarding ability to contribute toward CEQA costs.
6. Reach out to local agencies and determine which agencies anticipate growth and service area expansions in the near-term and prioritize completion of MSR/SOI Updates for those agencies first.
7. Modify the Rolling Work Plan to establish a 10-year MSR/SOI Update schedule with a midpoint abbreviated or streamlined sphere review process in order to focus limited resources on a comprehensive update each decade for all agencies.
8. Modify the Rolling Work Plan to update the cost estimates and extend the schedule to better align with the current Work Plan budget.
9. Modify the Rolling Work Plan to extend MSR/SOI Updates schedules for non-municipal service providers consistent with existing local Policy 10.1.3.

10. Establish a Work plan reserve account to save for consultant-prepared MSR/SOI Update studies and CEQA review when necessary.

Staff initiates the Fiscal Year 2021-22 Budget and Work Plan development process in January/February and staff is seeking guidance and input from the Commission to provide a roadmap to support that process.

Attachments: December 28, 2020 Comments from the Cities of Fort Bragg and Ukiah
December 28, 2020 Policies and Procedures Committee Meeting Staff Report Item 2b



December 28, 2020

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

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

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

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

We hope this finds you well.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Proposed SOI Policies Exceed LAFCo's Statutory Authority

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

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

The Proposed SOI Policies Violate CEQA

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

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

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

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

Thank you for your time and your consideration.

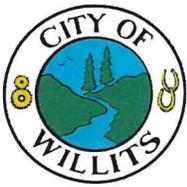
Yours Sincerely,



Tabatha Miller
City Manager
City of Fort Bragg



Sage Sangiacomo
City Manager
City of Ukiah



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

November 24, 2020

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

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

Dear Members of the Mendocino LAFCO Policies and Procedures Committee,

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

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

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

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

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

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

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

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

Sincerely,

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

Dusty Duley
Community Development Director

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



November 24, 2020

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

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

Honorable Members of the Policies & Procedures Committee:

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

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

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

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

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

1. Lead Agency/Responsible Agency duties

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



2. Baseline determinations

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

3. Potential categorical exemptions

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

4. Impact analysis/growth inducement

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

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

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



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

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Craig Schlatter", is written over the typed name.

Craig Schlatter
Director of Community Development

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

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

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

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

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

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

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

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

MEMORANDUM

TO: Mendocino LAFCO Policies & Procedures Committee

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

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

DATE: December 11, 2020

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

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

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

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

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

Our specific concerns are summarized below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AAM:jis

MENDOCINO
Local Agency Formation Commission
Staff Report

DATE: December 28, 2020
TO: Mendocino Local Agency Formation Commission Policies & Procedures Committee
FROM: Uma Hinman, Executive Officer
SUBJECT: Policy Development for Spheres of Influence

STAFF RECOMMENDATION

Consider proposed policy language regarding spheres of influence and direct staff to revise as needed and recommend to the Commission for consideration on January 4, 2021.

BACKGROUND

On November 24, 2020, the Policies & Procedures Committee met to review proposed policy language regarding spheres of influence and develop recommendations to the full Commission.

The Committee discussed suggested revisions from Commissioner McCowen and written comments from the City of Ukiah and the City of Willits requesting postponement of the item to allow additional time to review the proposed policies and work collaboratively with LAFCo staff (Attachment 3).

The Committee postponed the item to allow staff time to incorporate Commissioner McCowen's requested changes, to reach out to the City Planning Departments regarding the draft SOI policy language, and to reconvene the Committee in mid-December to further consider the item.

On December 7, 2020, the Commission directed staff to bring an item forward at the January 4, 2021 meeting for the Commission to consider adoption of the proposed SOI policies.

LAFCo staff revised the SOI policies based on comments received and distributed them to the four City Planning Departments and interested Special Districts on December 2, 2020 for review (Attachment 2). LAFCo staff also met with staff from the City of Ukiah, City of Fort Bragg, City of Willits, and the Ukiah Valley Sanitation District upon request, and concerns/questions raised are summarized below.

City of Ukiah

- LAFCo should collect more in apportionment fees to discharge its legal obligations for MSR/SOI Updates rather than attributing a disproportionate share of costs to multi-service agencies for non-coterminous SOI Updates and CEQA.
- This is a fiscal issue and should be addressed in financial policies not SOI policies.
- The CEQA baseline should be based on the existing agency SOI and the proposed policy could result in an EIR for any sphere actions other than a coterminous sphere.
- Only adopting coterminous spheres could result in unintended consequences of promoting sprawl and could hinder good governance.
- The outdated sphere definition is not based on LAFCo law and is subjective in nature.

- The staff report lacked sufficient analysis related to the effects of the proposed policy changes.
- The policy changes seem rushed, should be addressed by the new Commission instead of the outgoing Commission, and warrant additional outreach with all stakeholders together, which is difficult during the holiday season.

City of Fort Bragg

- Cost shifting is concerning and additional expenses have to be heavily scrutinized by agencies.
- Agencies do not want to get locked into a higher level of CEQA review when an exemption applies.

City of Willits

- Who pays for CEQA if LAFCo requires a DUC or other area a City did not request into their SOI during a LAFCo-initiated SOI update?
- The definitions of "update" and "outdated spheres" could be clearer.
- What if a SOI review has determined that no changes are warranted, would it default to an outdated sphere?
- How often does LAFCo law require a SOI review?
- Does an SOI that is 10 years old revert to the City limits baseline?
- Does Policy 10.1.3.g indicate that LAFCo can expand a City SOI without their agreement?

LAFCo staff further revised the proposed policies based on feedback received and is represented by track changes for ease of review (Attachment 1). Some additional information is summarized below.

- LAFCo law is necessarily broad and allows LAFCo to establish policies to address local conditions.
- In general, the baseline for CEQA review is the physical environment at the time of evaluation and for SOI Updates involves analysis of indirect impacts associated with facilitating annexation and the provision of municipal services.
- Policy 10.1.3.c was revised to clarify that for municipal service providers, an SOI Update will be prepared every 10 years with a midpoint review that may result in the Commission reaffirming the existing SOI to ensure an appropriate sphere remains current.
- Policy 10.1.3.d was revised to clarify the roles of lead and responsible agencies for SOI actions and that for current spheres, the baseline for CEQA is the existing sphere.
- Policy 10.1.3.f was revised to clarify that there is no requirement for a higher level of environmental review than is necessary.
- Policy 9.12.2 allows minor applications to be processed with an outdated sphere instead of no application processing being allowed currently.
- Many of the policies are consistent with past LAFCo practice.
- The 5-Year Rolling Work Plan should be revised for Fiscal Year 2021-2022 to account for the 10-year SOI Update schedule and midpoint review for municipal service providers and SOI Updates for non-municipal service providers prepared only as needed, and potential cost increases for studies.

The following draft language is proposed for consideration of the Policies & Procedures Committee. Proposed amendments to existing policies are indicated with underlined and ~~striketrough~~ formatting.

9.12 BOUNDARIES

9.12.1 DEFINITE BOUNDARIES REQUIRED

LAFCo shall not accept as complete any application unless it includes boundaries that are definite, certain, and fully described.

9.12.2 SOI CONSISTENCY REQUIRED

LAFCo shall not approve any major change of organization or reorganization proposals that are inconsistent with the agency's SOI. In the event an SOI is outdated, before any major change of organization may be approved, the SOI must be updated. The only exceptions are minor proposals that normally would not considerably intensify existing development, generate or facilitate significant new development, or create adverse impacts on the subject agency or affected agencies. Examples of minor proposals include fire service annexations or detachments, annexation of agency-owned property containing agency public service facilities and/or infrastructure, and annexations of developed property. SOI establishment, amendment, and update shall precede consideration of proposals for changes of organization or reorganization.

9.12.23 BOUNDARY CRITERIA

LAFCo will generally favor applications with boundaries that do the following:

- a) create logical boundaries within the affected agency's sphere of influence, and where possible, eliminate previously existing islands or other illogical boundaries;
- b) follow natural or man-made features and include logical service areas where appropriate; and
- c) place all streets and rights-of-way within the same jurisdiction as the properties which abut thereon and/or for the benefit of which such streets and rights-of-way are intended.

9.12.34 BOUNDARY ADJUSTMENTS

LAFCo will generally amend proposals with boundaries which:

- a) Split neighborhoods or divide existing identifiable communities, commercial districts, or other areas having a social or economic identity.
- b) Result in islands, corridors, or peninsulas of incorporated or unincorporated territory or otherwise cause or further the distortion of existing boundaries.
- c) Are drawn for the primary purpose of encompassing revenue-producing territories.
- d) Create areas where it is difficult to provide services.

9.12.45 BOUNDARY DISAPPROVALS

If LAFCo, in consultation with the applicant, cannot suitably adjust the proposed boundaries to meet the criteria established above, it will generally deny the proposal.

10.1 SPHERES OF INFLUENCE

10.1.2 DEFINITIONS

The Commission incorporates the following definitions:

- a) an "Establishment" refers to the initial development and determination of a sphere of influence by the Commission;
- b) An "amendment" refers to a limited change to an established sphere of influence typically initiated by a landowner, resident, or agency; and

- c) An “update” refers to a comprehensive change to an established sphere of influence typically initiated by the Commission. An SOI review is not an SOI update.
- d) An “outdated sphere” refers to an established sphere of influence that has not been updated for ten (10) years or more for municipal service providers or where circumstances have changed significantly since the last SOI update. SOI’s become outdated where substantial changes have occurred in the statutory requirements, agency services, finances, or governance, and/or community, resulting in the most recent MSR/SOI no longer providing reliable or relevant information needed by the Commission to carry out its responsibilities. The “outdated sphere” determination shall be made by the Executive Officer, subject to confirmation by the Commission in the event the determination is disputed.

10.1.3 SPHERE UPDATES

In updating spheres of influence, the Commission’s general policies are as follows:

- a) LAFCo must adopt a Sphere of Influence (SOI) for each city and special district in its jurisdiction and keep it updated in accordance with CKH. Overseeing each SOI is a LAFCo responsibility. LAFCo strongly encourages the participation and cooperation of the subject agency in the SOI process, but the Commission remains the sole authority for establishing and making changes to an agency’s SOI and associated Municipal Service Review. All LAFCo actions must be consistent with the subject agency’s SOI and changes to an agency’s SOI require careful review and consideration.
- ~~ab) The Commission will update the SOI of municipal service providers periodically in accordance with the Cortese-Knox-Hertzberg Local Government Act of 2000 (CKH), and only as needed for non-municipal service providers review all spheres of influences every five years for each governmental agency providing municipal services. Municipal services include water, wastewater, road, police, and fire protection services. Non-municipal services include, but are not limited to, ambulance or emergency medical services, park and recreation, health care hospital, resource conservation, cemetery, lighting, landscaping, and pest control.~~
- ~~c) Spheres of influence of districts not providing municipal services including, but not limited to, ambulance, recreation, hospital, resource conservation, cemetery, and pest control shall be updated as necessary.~~
- c) The most recent SOI for municipal service providers will be reviewed every five years for accuracy and relevancy, and may result in the Commission reaffirming the existing SOI to ensure an appropriate sphere remains current. The agency SOI will be scheduled for a full MSR/SOI Update when deemed outdated or where major changes in the SOI are being considered. City SOI’s shall be updated at least every 10 years or as soon thereafter as the update can be completed. Whenever feasible, city sphere updates shall be scheduled to coincide with city general plan updates.
- d) Sphere actions by the Commission are subject to the provisions of the California Environmental Quality Act (CEQA). The Commission is normally the lead agency for SOI establishment and update, and the agency is normally the lead agency for proposed SOI amendments. In the case of an outdated SOI, the baseline for CEQA review shall be the current jurisdictional boundary of the agency. In the case of a current SOI, the baseline for CEQA review shall be the currently approved SOI boundary of the agency.
- e) Where an agency desires an SOI Update including territory outside an agency’s current boundary, the agency shall reimburse LAFCo for the cost of the environmental and other review required. Where an agency desires a sphere amendment proposed in a manner to permit additional development, the agency must prepare an appropriate environmental document and/or

reimburse LAFCo for the cost of the environmental and other review required. This policy is intended to impose the cost on the agency seeking SOI expansion opportunities in an effort to keep annual apportionment fees lower for the other agencies that contribute to the support of LAFCo.

- f) All costs incurred by LAFCo for preparation of establishing a non-coterminous SOI Update for an agency, or expanding an existing non-coterminous SOI, shall be subject to full cost recovery from the agency. Potential costs include necessary MSR studies, CEQA compliance, staff time, and any additional fees charged by state or local agencies for reviewing, processing, and filing the project. Nothing in this Policy shall be construed as a requirement for a higher level of environmental review than is necessary. Sphere changes that are subject to CEQA exemption shall be carried out accordingly, and otherwise will involve preparation of an Initial Study to determine the appropriate level of CEQA review.
- g) In the absence of a legally binding commitment from a subject agency for full cost recovery of establishing or expanding a non-coterminous SOI Update, the Commission shall prepare a coterminous sphere or may, at the Commission's sole discretion, maintain and/or expand the most recent sphere if subject to CEQA exemption or if funding is otherwise available for the appropriate level of CEQA review.
- h) Sphere of influence changes initiated by ~~application~~ any agency providing a municipal service shall generally require either an updated or new Municipal Service Review unless LAFCo determines that a prior service review is adequate.
- i) A combined Municipal Service Review (MSR) and SOI Update shall be prepared whenever feasible to minimize costs, streamline processing, and to maximize data collection and analysis.

- Attachments:**
- 1. Policy Revisions since December 2, 2020
 - 2. Policy Revisions since November 24, 2020
 - 3. Comments from November 24, 2020 Policies and Procedures Committee meeting

ATTACHMENT 1

Mendocino LAFCo

Revised Proposed SOI Policies

Proposed amendments to the policies are indicated with underlining and ~~striketrough~~ formatting. Track changes indicate modifications from the December 2nd version.

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- d) An “outdated sphere” refers to an established sphere of influence that has not been updated for ten (10) years or more for municipal service providers or where circumstances have changed significantly since the last SOI update. SOI’s become outdated where substantial changes have occurred in the statutory requirements, agency services, finances, or governance, and/or community, resulting in the most recent MSR/SOI no longer providing reliable or relevant information needed by the Commission to carry out its responsibilities. The “outdated sphere” determination shall be made by the Executive Officer, subject to confirmation by the Commission in the event the determination is disputed.

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- f) All costs incurred by LAFCo for preparation of establishing a non-coterminous SOI Update for an agency, or expanding an existing non-coterminous SOI, shall be subject to full cost recovery from the agency. Potential costs include necessary MSR studies, CEQA compliance, staff time, and any additional fees charged by state or local agencies for reviewing, processing, and filing the project, shall be subject to full cost recovery from the agency. Nothing in this Policy shall be construed as a requirement for a higher level of environmental review than is necessary. Sphere changes that are subject to CEQA exemption shall be carried out accordingly, and otherwise will involve preparation of an Initial Study to determine the appropriate level of CEQA review.
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ATTACHMENT 2

Mendocino LAFCo Revised Proposed SOI Policies

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- ~~a~~b) The Commission will update the SOI of municipal service providers periodically in accordance with the Cortese-Knox-Hertzberg Local Government Act of 2000 (CKH), and only as needed for non-municipal service providers review all spheres of influences every five years for each governmental agency providing municipal services. Municipal services include water, wastewater, road, police, and fire protection services. Non-municipal services include ambulance, recreation, health care hospital, resource conservation, cemetery, lighting, and landscaping, and pest control.
- ~~c)~~ Spheres of influence of districts not providing municipal services including, but not limited to, ambulance, recreation, hospital, resource conservation, cemetery, and pest control shall be updated as necessary.
- c) The most recent SOI for municipal service providers will be ~~evaluated~~ reviewed every five years for accuracy and relevancy. The agency SOI will be scheduled for a full MSR/SOI Update when deemed outdated or where major changes in the SOI are being considered. City SOI’s shall be updated at least every 10 years or as soon thereafter as the update can be completed. Whenever ~~feasible~~possible, city sphere updates shall be scheduled to coincide with city general plan updates.
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an the agency. In the case of a current SOI, the baseline for CEQA review shall be the currently approved SOI boundary of the agency. Therefore,

- e) Where an agency desires an SOI Update or amendment including territory outside an agency's current boundary, the agency will be expected to shall reimburse LAFCo for the cost of the environmental and other review required. Where an agency desires a sphere amendment proposed in a manner to permit additional development, the agency must prepare an appropriate environmental document and/or reimburse LAFCo for the cost of the environmental and other review required. This policy is intended to impose the cost on the agency seeking SOI expansion opportunities in an effort to keep annual apportionment fees lower for the other agencies that contribute to the support of LAFCo.
- ef) All costs incurred by LAFCo for preparation of establishing a non-coterminous SOI Update for an agency, or expanding an existing non-coterminous SOI, including necessary MSR studies, CEQA compliance, staff time, and any additional fees charged by state or local agencies for reviewing, processing, and filing the project, shall be subject to full cost recovery from the agency.
- fg) In the absence of a legally binding commitment from a subject agency for full cost recovery of establishing or expanding a non-coterminous SOI Update, the Commission will shall prepare a coterminous sphere or may, at the Commission's sole discretion, possibly maintain and/or expand the most recent sphere if subject to CEQA exemption.
- gh) Sphere of influence changes initiated by application any agency providing a municipal service shall generally require either an updated or new Municipal Service Review unless LAFCo determines that a prior service review is adequate.
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ATTACHMENT 3a

To: Policies & Procedures Committee
From: Committee Member – Commissioner McCowen
Date: November 23, 2020
RE: Comments on the Proposed Sphere of Influence Policy Revisions for November 24th
Policies & Procedures Committee Meeting

1) 9.12.2 SOI Consistency

"Examples of non-major proposals include fire service annexations or detachments..." Is it possible that annexation to a fire district could facilitate development? If so, such an annexation might not qualify as non-major. A better example might be cemetery districts.

Same sentence as above: "...and annexations of fully developed property." The term "fully developed property" may be ambiguous as a property could be fully developed in that it is fully developed to the allowable limits in terms of lot coverage but may in fact be substantially under-developed. Conversely, a geographic area, such as south Ukiah might be generally fully developed, with most parcels fully built out, but with a limited number of vacant or underutilized lots. Would a defined area be considered "fully developed" even if there is limited development opportunity that would be consistent with existing development? Or could an infill project consistent with existing zoning be considered non-major?

2) 10.1.2 Definitions

d) An "outdated sphere" refers to a sphere that has not been updated for ten (10) years or more or where circumstances have changed significantly since the last update. [Comment: Ten years provides greater clarity than "considerable amount of time" and is generous considering the statutory deadline for SOI updates. Potentially the time could be shortened.] In the second sentence I might add a comma after "community".

3) 10.1.3 Sphere Updates

a) Suggest capitalize "municipal service review".

b) Suggest add a comma between "lighting and landscaping" and delete "and" at end of last sentence.

c) In place of "Whenever possible" suggest "Whenever feasible" at beginning of last sentence.

d) [Comment: If an SOI is current and the agency is not seeking an expansion why wouldn't the current SOI be the CEQA baseline? The suggested language changes that follow are based on the premise that an SOI with no expansion would be a baseline condition.] Retain first sentence as is. Revise second sentence to read: "The baseline for CEQA review, in the case of an outdated or coterminous SOI, shall be the current jurisdictional boundary of the agency. Retain balance of section and add a new last sentence: "The baseline for an SOI that is not outdated or coterminous shall be the currently approved boundary of the SOI. [Note: I'm assuming significant changes that would trigger greater CEQA review would also render an existing SOI outdated. Also, I think our indemnity clause would be a backstop against a lawsuit alleging improper CEQA review.]"

e) "All costs incurred by LAFCO for preparation of establishing a non-coterminous SOI Update for an agency, or expanding an existing non-coterminous SOI, including necessary MSR studies, CEQA compliance...."

f) "In the absence of a legally binding commitment from a subject agency for full cost recovery of establishing or expanding a non-coterminous SOI Update, the Commission shall prepare a coterminous sphere or may, at the Commission's sole discretion, maintain and/or expand the most recent sphere if subject to CEQA exemption.

g) Suggest capitalize "municipal service review".

ATTACHMENT 3b



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

November 24, 2020

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

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

Dear Members of the Mendocino LAFCO Policies and Procedures Committee,

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

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

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

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

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

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

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

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

Sincerely,

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

Dusty Duley
Community Development Director

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



November 24, 2020

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

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

Honorable Members of the Policies & Procedures Committee:

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

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

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

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

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

1. Lead Agency/Responsible Agency duties

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



2. Baseline determinations

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

3. Potential categorical exemptions

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

4. Impact analysis/growth inducement

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

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

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



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

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

Sincerely,

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

Craig Schlatter
Director of Community Development

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