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November 24, 2020

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

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

Dear Members of the Mendocino LAFCO Policies and Procedures Committee,

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

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

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

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

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

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

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

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

Sincerely,

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

Dusty Duley
Community Development Director

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



November 24, 2020

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

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

Honorable Members of the Policies & Procedures Committee:

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

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

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

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

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

1. Lead Agency/Responsible Agency duties

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



2. Baseline determinations

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

3. Potential categorical exemptions

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

4. Impact analysis/growth inducement

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

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

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



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

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

Sincerely,

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

Craig Schlatter
Director of Community Development

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