

DATE: April 7, 2006

TO: Members, Local Agency Formation Commission
Interested Agencies and Individuals

FROM: Peter Banning, Executive Officer

SUBJECT: San Rafael Area Service Review & Sphere of Influence Update

The staff report and recommendations for the San Rafael Area Service Review and Spheres of Influence Update was distributed under separate cover and posted on the LAFCO website on January 31, 2006. Public agencies and interested persons who have participated in the study in the past two years were sent copies. The Commission is scheduled to open the public hearing on the report and recommendations at its April 13, 2006 meeting and extend that hearing to its meeting on June 8, 2006. Subsequent public hearings may also be scheduled as needed to accommodate testimony or other public participation.

The report contains descriptive material on how local government services are provided by the City of San Rafael and various special districts in the San Rafael area and staff's recommendations for updating the sphere of influence of each of the affected agencies as required by Sections 56425 and 56430 of the Government Code. These code sections require LAFCO to review adopted spheres of influence every five years. Under this requirement, the spheres of influence of the City and associated special districts will be reviewed again in 2011. The Commission has also adopted policies and procedures for reviewing adopted spheres of influence at the request of interested parties as conditions warrant during the five-year interval between periodic reviews.

During the public hearings, staff will recap the contents of the report and correspondence received, respond to the Commission's questions and correct reporting errors identified in testimony. The Commission will receive testimony from all interested persons on the content and recommendations in the report. The anticipated schedule of hearings is planned to allow public testimony for any of the spheres of influence under study to be heard by the Commission during a minimum of two separate Commission meetings.

Summary of Recommendations

The staff report recommends that the Commission take various actions to revise or affirm without change the spheres of influence of the City and special districts in the San Rafael area. The following table summarizes the recommended actions and references portions of the report that support those recommendations.

<u>Agency</u>	<u>Recommended Sphere of Influence</u>	<u>See Page(s)</u>
City of San Rafael	Amend to exclude Lucas Valley, Marinwood & St. Vincent/Silveira areas	iv, v, 109-120, 134-137
San Rafael Sanitation District	Amend to include upper Sun Valley	vi, 142-143, 147
Las Gallinas Valley Sanitary	Amend to exclude San Rafael Ridge	vi, 144-147
Marinwood CSD	Amend to include St. Vincent/Silveira West of NW Pacific Railroad line	v, 135 138-142
CSAs #6, #9, #13, #19, & #31	Coterminous with current boundaries, re-affirm SOI without change	vi, 149-153
County Service Area #18	Amend to exclude incorporated area	vi, 154-155

Comments Received Prior to Public Hearing

Prior to the publication of the staff report as well as the public hearing, representatives of St. Vincent's School for Boys wrote two letters regarding the preparation of the staff report and the Commission's impending sphere of influence determinations (see letters of Stephen L. Kostka, Bingham McCutchen LLP, Attachments A and B). Both letters assert that "Keeping the (St. Vincent's and Silveira) properties in San Rafael's sphere of influence is necessary to facilitate orderly and logical development." In support of this central assertion, the letters provide extensive supporting maps, data and argument, including the following:

- The St. Vincent's/Silveira area has had and continues to have a role in addressing the housing needs of the City of San Rafael as the largest potential infill housing opportunity in the area;

- The area is located in the Eastern Urban Corridor of Marin County, adjacent to the City where a full range of urban services and facilities are available;
- The City of San Rafael can feasibly extend services to the St. Vincent's/Silveira area;
- Exclusion of the area from the City's sphere of influence would effectively eliminate the development potential of the last significant piece of infill property in the area, thereby reducing any real chance of affordable housing.
- Prior to the City's request to remove St. Vincent's/Silveira from the City's SOI, the area was considered a housing opportunity and not a community separator between the cities of San Rafael and Novato in the adopted general plans of the City and the County;
- Eliminating development potential from St. Vincent's/Silveira will be foreseeably displace development to other locations within or outside of the planning area, especially northward along the U.S. Highway 101 corridor.;
- St. Vincent's is an integral part of the social and economic community of the City of San Rafael, with a large number and variety of activities, programs, services and community events and interactions between the St. Vincent's campus and the surrounding San Rafael community;

The letters specifically request "... that LAFCO maintain the current sphere, at least until (a) the California Department of Housing and Community Development has determined that San Rafael has adopted satisfactory plans to meet its fair share of regional housing needs (which is required by 2007); and (b) the legality of San Rafael's current General Plan has been determined."

Staff has also received correspondence from the Las Gallinas Valley Sanitary District requesting that the Commission retain the San Rafael Ridge/Sleepy Hollow - Terra Linda Divide area in the District's sphere of influence (see Attachment C). The District's letter states:

LGVSD will, in the immediate future, provide recycled treated wastewater to specific areas of our District and areas to the north of our district. Should the district be asked to provide recycled treated wastewater to the aforementioned open space for irrigation or fire protection, we would want the area to be part of our designated service area.

No other comments have been received to date. Staff will respond to comments prior to the close of the public hearing.

Environmental Review

As described in the staff report, Government Code Section 56425 requires LAFCO to review its adopted spheres of influence every five years. State law and Commission policy provide for review of changing circumstances that might affect the appropriateness of adopted spheres.

Some, but not all sphere of influence designations constitute projects under the California Environmental Quality Act (CEQA). LAFCO decisions that are development-driven, that would facilitate the extension of urban services to previously un-served areas represent the first step in a process that can ultimately result in a change to the physical environment and are therefore clearly subject to CEQA.

Application of CEQA is clearly appropriate where new territory is added to the jurisdiction of a city through annexation or made eligible for annexation by being added to a city or district sphere of influence. In either case, the actions of LAFCO may lead to a change in the availability of urban services and/or a change in the jurisdiction of agencies that regulate land use. Either of these events can create changes in the physical environment by facilitating development or altering the regulatory system governing development.

The actions contemplated here (listed above) are affirmations of, or amendments to, existing spheres of influence adopted by LAFCO in the 1980s. The proposed amendments would in each case either *reduce* the territory within the sphere of influence of an agency or have no effect on the territory to which urban services are already available.

The report currently under consideration combines service reviews required by Government Code Section 56430 and a review of spheres of influence required by Section 56425. Service reviews must be completed in advance of, or in conjunction with, periodic review of adopted spheres of influence.

Service reviews engage LAFCO in study of all agencies that provide a municipal service within a defined geographic area of a county. Upon completion of a service review, the Commission will adopt findings on the nine criteria specified under Section 56430 and described in the report. No other action is inherent in a service review.

As a study of local government, a service review is exempt from CEQA under Section 15306 of the State CEQA Guidelines, which provides exemption:

... for data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. These may be strictly for information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted, or funded. [emphasis added]

In this case, the service reviews are a part of the Commission's broader review of adopted spheres of influence for local government agencies in the San Rafael area. A review of adopted spheres of influence may require environmental review in instances where such review results in amendment of the planned boundary and service area of a local government agency. That is, if the planned boundary of a local agency is expanded to include new areas, the potential extension of service provided by that agency could have a direct or indirect effect on the environment.

The State CEQA Guidelines Section 15061 states that:

... CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

The reduction of area within a sphere of influence cannot create actual or potential environmental effects because such actions preserve existing land use planning regulatory jurisdictions. The existing sphere of influence of the City of San Rafael has provided the possibility of annexation of territory to the City. A change in that sphere of influence that temporarily or permanently removes the potential for annexation to the City acts to retain the area in the jurisdiction of the County. No physical changes to the environment will result from the preservation of existing land use planning authority.

The State CEQA Guidelines Section 15320 provides exemption for "... changes in the organization or reorganization of local governmental agencies where the changes do not change the geographical area in which previously existing powers are exercised...." The sphere of influence amendments proposed in the staff report would ensure that the County's land use planning jurisdiction would be retained, i.e. that no changes to the geographical area of agencies exercising their power to regulate land use would occur.

As a matter of special interest, the proposed exclusion of the St. Vincent's/Silveira area from the sphere of influence of the City of San Rafael deserves specific discussion. The City of San Rafael adopted a new general plan in 2004 that excluded the St. Vincent's/Silveira area. The City also certified an Environmental Impact Report examining the impacts of this exclusion and many other changes in the general plan. Among those changes was the redistribution of housing within the City's jurisdiction if

the City were to meet its 'fair share' housing needs without annexation of the St. Vincent's/Silveira area. Although the City's actions are currently under challenge in court, LAFCO is required to assume the City's actions and the certification of its EIR are valid and sufficient.

More to the point, a city is unable to pre-zone territory that is not in the planning area of its general plan because all zoning decisions made by a city, including pre-zoning decisions, must be consistent with its adopted general plan. Pre-zoning is a prerequisite for annexation by LAFCO. In fact, pre-zoning usually triggers the application of CEQA and the environmental review process by the annexing city. If pre-zoning of an area is required prior to annexation but is impossible under a city's general plan, that area should be excluded from its sphere of influence. For LAFCO to do otherwise would be inconsistent with the definition of sphere of influence as the "... *probable* boundary and service area of a local government agency."

The City's general plan amendments to exclude St. Vincent's/Silveira have already occurred. The St. Vincent's/Silveira area is outside the territory to which the City of San Rafael may extend services or regulate land use. LAFCO's decision to retain or exclude the St. Vincent's/Silveira area in the sphere of influence of the City of San Rafael is not necessary to, and cannot reverse actions taken by the City. LAFCO's sphere of influence decisions in this case are not capable of mitigating the effects of the actions taken by the City.

In the cases described here, no direct or indirect environmental impacts can be anticipated through the action of LAFCO to adopt the recommendations in this report. Accordingly, staff has concluded that the proposed LAFCO action (adoption of resolutions amending spheres of influence of local government agencies in the San Rafael area) is exempt from the California Environmental Quality Act.

Staff will accordingly prepare a Certificate of Exemption, unless otherwise directed by the Commission.

Recommended Actions

Staff recommends that the Commission:

1. Receive the staff report and continue the public hearing on the San Rafael Area Service Review and Sphere of Influence Update to the June 8, 2006 Commission meeting to provide time for review and comment by affected agencies, organizations and individuals.

2. Direct staff to respond to public comments during the course of the hearing and to clarify the content of the report where necessary.

Respectfully submitted,

Peter Banning
Executive Officer