

Supplemental Responses to City of Highland Letter Dated January 16, 2009

On January 16, 2009, the City of Highland (the "City") submitted comments on County of San Bernardino Local Agency Formation Commission's ("LAFCO") responses to the City's July 18, 2008 comment letter. LAFCO, as a lead agency, must evaluate comments submitted by the public and governmental agencies on a Draft EIR and prepare a written response to any significant environmental issues as part of the Final EIR. (State CEQA Guidelines, §§ 15088(a), 15132.) "In particular, the major environmental issues raised when the Lead Agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted." (State CEQA Guidelines, § 15088(b).) Responses to comments need not be exhaustive; however, they need to demonstrate good faith, reasoned analysis. (Id.; Twain Harte Homeowners Association v. County of Tuolumne (1982) 138 Cal.App3d 664, 686.) The requirement that responses be specific does not mean that an agency must accept the commentor's assumptions. (Greenebaum v. City of Los Angeles (1984) 153 Cal.App.3d 391, 413.) After review of the State CEQA Guidelines and the Public Resources Code, LAFCO has complied with CEQA. Below, please find LAFCO's responses to the City's additional comments.

1. The City states that LAFCO's responses to comments 5.2, 5.7, 5.8, 5.9, 5.10, and 5.11 are inadequate because they minimize the issues raised by the City. LAFCO's responses are adequate because LAFCO's responses are thorough, complete, and supported by substantial evidence, as reflected in the EIR for LAFCO 3076, as well as other documents in the administrative record. Notably, the City's primary concern with respect to 5.2, 5.7, 5.8, 5.9 and 5.10 is that, in the City's opinion, the Draft EIR reflects a bias toward approving LAFCO 3076. However, bias is not an environmental impact that must be analyzed under CEQA. LAFCO is guided by the principles of CEQA that require it to exercise its independent judgment preparing and certifying an EIR, and supporting the EIR with substantial evidence in the record, which it has done.

Nevertheless, in responding to the City's comment, speculation and mere opinion that there is bias does not constitute substantial evidence under CEQA and substantial measures were taken to avoid bias. (See e.g., Pub. Res. Code § 21082.2.) Here, to avoid any potential for bias independent peer review was performed on the environmental documents. LAFCO retained, through a qualifications-based Request for Proposal process, an independent professional environmental consultant (RBF Consulting) to assist LAFCO in preparing the EIR. LAFCO also utilized its own independent environmental consultant to review the EIR documents and related materials (Tom Dodson & Associates). LAFCO's environmental consultant (RBF Consulting) retained additional third party review consultants to review administrative draft EIR sections and provide input on relevant issues (including BonTerra Consulting, who reviewed

Section 4.2, Biological Resources, and Dr. Dennis Williams of GeoScience Water, who reviewed Section 4.3, Water Supply and Water Quality). CEQA defines substantial evidence as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” (14 Cal. Code Regs (“State CEQA Guidelines”) §15384(a).) Based on the foregoing, LAFCO was not biased in analyzing the impacts with which the City is concerned and the analysis and conclusions are supported by substantial evidence.

As the City’s comments relate to comment 5.11, no new information is raised that has not been addressed in the Final EIR. (See, e.g., Responses to Comments Nos. 5.2, 5.9, 5.10, 5.11, 6.4, 6.20, 6.21, incorporated herein by reference.) Project alternatives were adequately analyzed and, given that that consolidation would not result in any substantial environmental impacts, the project alternatives were rejected as infeasible on the basis that they would not meet the project objectives.

2. CEQA requires recirculation of an EIR prior to certification in very limited circumstances. (See, e.g., State CEQA Guidelines § 15088.5.) In pertinent part, State CEQA Guidelines section 15088.5 provides the following:
 - (a) A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. [. . .] "Significant new information" requiring recirculation include, for example, a disclosure showing that:
 - (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
 - (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
 - (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.
 - (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion*

Coalition v. Fish and Game Com. (1989) 214 Cal.App.3d 1043)

Here, however, LAFCO responded to all of the City's comments, and the comments do not present significant new information which would warrant recirculation. No new significant impacts of the project have been identified and no mitigation has been suggested. Moreover, the project alternative with which the City provides additional comments --the No Project alternative-- has been adequately analyzed and no other project alternative would clearly lessen environmental impacts because the project, as analyzed, would not result in any environmental impacts. (see e.g., Response to Comments, Comment Nos. 4.5, 5.2, and 5.10, incorporated herein by reference.) Finally, the EIR is not fundamentally and basically inadequate, such that the public was precluded from review and comment. There was extensive public participation in the scoping meeting for the EIR, as well the public meetings and hearings that followed. The extent of the public participation is evidenced by the fact that six comments letters were received by LAFCO. Since the City's comments have not provided any basis which would warrant recirculation, recirculation is not required.