

PLACER LOCAL AGENCY FORMATION COMMISSION

Robert Weygandt, Chair (County); Gray Allen, Vice-Chair (District); Jim Holmes (County); Bill Kirby (City); E. Howard Rudd, (Public); Ron Treabess (District); Miguel Ucovich (City)

REGULAR HEARING AGENDA February 11, 2015--4:00 p.m. Board of Supervisors' Chambers County Administrative Building 175 Fulweiler Avenue, Auburn, CA 95603

- 1. Flag Salute**
- 2. Call to Order and Roll Call**
- 3. Approval of Agenda** (Action item)
- 4. Public Comment:** This is the time when persons may address the Commission on items not on the agenda. Please limit comments to three (3) minutes as the Commission is not permitted to take any action on items presented as public comment.
- 5. Approval of Minutes:** From the December 10, 2014 hearing. (Action item)
- 6. Olympic Valley Incorporation proposal:**
 - a. Status update on the proposed Incorporation of Olympic Valley proposal.
 - b. Appoint Commissioners to serve on the Selection Committee for a Consultant to prepare an Environmental Impact Report for the Incorporation Proposal.
 - c. Take Public Comment on Olympic Valley proposal.
- 7. Adopt Conflict of Interest Code.** The Commission will be asked to adopt a current Conflict of Interest Code
- 8. Executive Officer Reports:**
 - Legislative Committee
 - Proposal Status
 - Status of Municipal Service Reviews
 - Calafco activities
- 9. Commissioner Reports:**
- 10. Adjournment:**

For further information or to provide written comments on any item on the agenda, please contact the Placer LAFCO. Materials related to an item on this Agenda submitted to the Commission after distribution of the agenda packet are available for public inspection in the Placer LAFCO office at 110 Maple Street, Auburn, CA 95603 during normal business hours. Phone: (530) 889-4097. Placer LAFCO is committed to ensuring that persons with disabilities are provided the resources to participate in its meetings. If you require a disability-related accommodation, please contact the Clerk to the Commission at least two business days prior to the meeting date.

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**MINUTES
December 10, 2014**

1. The Flag Salute was led by Commissioner Rudd.
 2. Call to Order and Roll Call: Chairman Weygandt called the hearing to order at 4:00 p.m. in the Board of Supervisors Chambers at 175 Fulweiler Avenue, Auburn, CA. Those present and seated: Treabess, Rudd, Holmes, Ucovich, Sheehan, Kirby, and Weygandt. Staff present: Executive Officer Kris Berry, LAFCO Counsel Bill Wright, and Commission Clerk Linda Wilkie.
 3. Approval of Agenda: Approved as submitted by motion: Rudd/Holmes/7:0
 4. Public Comment: None
 5. Approval of Minutes from the November 12, 2014 hearing: Approved as submitted by motion: Holmes/Rudd/6:1 (Ucovich abstained)
 6. Olympic Valley Incorporation proposal:
 - a. Status update on the proposed Incorporation of Olympic Valley proposal: Ms. Berry stated that a Notice of Preparation for an EIR was circulated with a deadline for comments to back by November 26th. She said that quite a few comments were received and that they are included in the Commissions agenda package.
 - b. Take Public Comment on Olympic Valley proposal:
- Tom Day, with the Incorporate Olympic Valley Foundation, thanked staff for holding a meeting in Olympic Valley in November.
- Chairman Weygandt informed Mr. Day that the Commission would hold hearings in the proposal areas whenever possible.
7. Authorize Contract for LAFCO legal services (Action item) The Commission was asked to approve a contract with the Law Office of William Wright for legal services. Motion to approve: Holmes/Rudd/7:0
 8. Executive Officer Reports: Updates given on the following:
 - Legislative Committee
 - Proposal Status
 - Status of Municipal Service Reviews
 9. Commissioner Reports: Commissioner Kirby, as a member of the CALAFCO Board of Directors, will be helping with the annual conference.
 10. Adjournment: Chairman Weygandt adjourned the hearing at 4:30 p.m.

Linda Wilkie, Commission Clerk

PLACER COUNTY
LOCAL AGENCY FORMATION COMMISSION

110 Maple Street, Auburn California 95603

530-889-4097

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STAFF REPORT

DATE: February 4, 2015

TO: Chairman Weygandt, Commissioners Allen, Holmes, Kirby, Rudd, Treabess, Ucovich. Alternate Commissioners Duran, Gray, Nader, Sheehan.

FROM: Kris Berry, AICP, Executive Officer 

SUBJECT: Town of Olympic Valley Incorporation proposal update.

RECOMMENDATION:

It is recommended that the Commission:

- a. Receive a status update on the Incorporation Proposal;
- b. Appoint Commissioners to a selection committee to review proposals and to serve on an interview panel for selection of a Consultant for preparation of an Environmental Impact Report;
- c. Receive Public Comment on the Incorporate Olympic Valley Proposal.

SUMMARY:

Status Update:

Preparation of the Comprehensive Fiscal Analysis by the Consultants retained by LAFCO (RSG) is well under way. Responses to requests for information from the County and affected agencies have been received, the consultants are in the process of analyzing the information and following up on data received. We expect an Administrative Draft of the CFA in mid-February, and a Draft CFA early March. This is the critical document required for Revenue Neutrality discussions.

A Request for Proposals for the Environmental Impact Report was sent January 23, 2014 with a deadline of February 17, 2014. The proposal was sent directly by LAFCO to 10 consultants. In addition, LAFCO has had requests from numerous consultants for the proposal, and it has been posted on our website and CALAFCO's website, as well as announced in the County's weekly newsletter. We are anticipating bringing to the Commission a candidate for approval of a Contract at our March 2015 meeting.

Correspondence regarding our Scope of Work for the preparation of the Environmental Impact Report has been received by Whit Manley and is attached as correspondence.

Public Comment:

It is recommended that the Commission open the hearing for public comment regarding the Incorporation proposal at this time.

Attachments:

Exhibit "1" Correspondence



REMY | MOOSE | MANLEY
LLP

Whitman F. Manley
wmanley@rmmenvirolaw.com

January 30, 2015

VIA U.S. MAIL

Ms. Kristina Berry
Executive Officer
Placer County LAFCO
110 Maple Street
Auburn, CA 95603
KBerry@placer.ca.gov

RECEIVED
FEB 02 2015
LAFCO

Re: Request for Proposals – Preparation of EIR – Olympic Valley Incorporation
Proposal

Dear Ms. Berry:

We submit this letter on behalf of Squaw Valley Ski Holdings, LLC.

We have reviewed the Request for Proposals (“RFP”) issued by Placer County LAFCO regarding the preparation of an Environmental Impact Report (“EIR”) for the Olympic Valley Incorporation Proposal (“IOV Proposal”). We endorse LAFCO’s decision to prepare an EIR.

We also recommend, however, that LAFCO reconsider the scope of the EIR, as described in the RFP. In particular, an EIR prepared in accordance with the RFP will be too narrow to provide the analysis required by the California Environmental Quality Act (“CEQA”).

An EIR must consider the environmental effects that will result, directly or indirectly, from the approval of a project (in this case, the incorporation of Olympic Valley). In this case, the analysis must encompass all environmental impacts that are a reasonably foreseeable consequence of incorporation. Although an EIR need not engage in speculation, the agency must do all that it reasonably can to forecast what will occur in the event incorporation is approved. (CEQA Guidelines, §§ 15126.2, 15144-15145; see *Laurel Heights Improvement Ass’n of San Francisco, Inc. v. Regents of the University of California* (1988) 47 Cal. 3d 376.)

The EIR must “consider and resolve every fair argument that can be made about the possible significant effects of a project.” (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109.) Thus, if LAFCO has received a “fair argument” that the IOV project may result in a significant environmental effect, then the EIR must address that issue.

The “fair argument” standard established a low threshold for requiring further analysis. Even if the evidence bearing on an issue is conflicting, the agency must nevertheless address that issue in the EIR. Under a CEQA, an agency may not engage in a weighing process at the outset; rather, the evidence bearing on an issue must be disclosed in the EIR itself. (See *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903.)

In this instance, Placer County LAFCO has received evidence that the incorporation of Olympic Valley will foreseeably lead to a range of environmental consequences. In particular, LAFCO received a November 24, 2014, memorandum from Brian Boxer of Environmental Science Associates (“ESA”) identifying issues that should be analyzed in the IOV EIR. LAFCO has received additional input in other letters submitted during the scoping process, and at the scoping meeting held by LAFCO on November 18, 2014.

Based on the RFP, we are concerned that the EIR will fail to address issues that require analysis. In particular, the RFP states the EIR “does not need to speculate on impacts which may result from unknown future city council actions with respect to land use.” (RFP, p. 7.) While it is true as a general matter that EIRs need not engage in speculation, in this case changes in land-use policy are a foreseeable consequence of incorporation. In particular:

- Under State law, each jurisdiction must have a Housing Element, and the Housing Element must provide housing so that the jurisdiction provides an inventory of land available for the construction of housing that is affordable to all income levels. Right now, that obligation falls on Placer County, and thus can be fulfilled by the County as a whole. If incorporation is approved, then that obligation will fall on the newly incorporated city. The EIR should therefore examine the extent to which the city will meet its housing obligations and, if not, the actions that the city will have to take in order to come into compliance. These actions would consist of establishing zoning standards, policies and programs to ensure the city meets its obligation to provide housing that is affordable at all income levels. Even if the EIR cannot predict with certainty exactly what land will be rezoned to meet these obligations, the EIR can identify the obligations, and analyze the impacts of meeting them.
- As explained in detail in Mr. Boxer’s memorandum, the proposed new city, if incorporated, would have a remarkably small population base, and have a strikingly homogenous economy, dominated by an industry noted for its cyclical and weather-dependent character. A newly incorporated city would face immediate pressure to diversify its economy and broaden its tax base. The EIR should examine the extent to which this pressure would distort the city’s land-use decision-making process. As Mr. Boxer explains, “the EIR must examine existing land use patterns, holding capacity, demographic projections, and develop one or more programmatic future growth scenarios based on the need to ensure its ability to continue generating revenue to provide services within the new incorporated city, and to do so while responding to changing conditions such as climate change and the need to diversify the city’s economy.”

Ms. Kristina Berry
January 30, 2015
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An EIR that does not address these issues will blink at reality. More to the point, such an EIR will not meet the requirements of CEQA. We therefore recommend that LAFCO revise and reissue the RFP to require such analysis, along with the other issues identified in Mr. Boxer's memorandum.

Thank you again for your consideration of our comments. Please contact me if you have any questions.

Very truly yours,

A handwritten signature in cursive script that reads "Whitman F. Manley". The signature is written in black ink and is positioned above the printed name.

Whitman F. Manley

memorandum

date November 24, 2014

to Kristina Berry, Executive Officer, Placer County Local Agency Formation Commission

cc LAFCO Commissioners: Robert Weygandt (Chair), E. Howard Rudd, Gray Allen, Donna Barkle, Jim Holmes, Ron Treabess, Miguel Ucovich
LAFCO Counsel, William Wright

from Brian D. Boxer, AICP, ESA Senior Vice President/Community Development Practice Leader

subject Olympic Valley Incorporation Project Draft EIR Notice of Preparation

Environmental Science Associates (ESA) submits this memorandum on behalf of Squaw Valley Ski Holdings, LLC (Squaw Valley) for the consideration of the Placer County Local Area Formation Commission (LAFCO) in response to LAFCO's Notice of Preparation of a Draft Environmental Impact Report for the Town of Olympic Valley Incorporation Project. For the reasons explained herein, LAFCO should require the preparation of a complete environmental impact report (EIR), including in-depth analysis of the resource categories outlined below prior to considering the IOV Project.

Overview and Summary

CEQA requires a broad assessment of the potential effects of a proposed action that provides "the fullest possible protection to the environment." The EIR addressing the proposed incorporation of Olympic Valley must assess environmental impacts in light of reasonably foreseeable conditions that could result from the proposed project. The proposed incorporation would forever change the revenue base that would be available to provide services and protect the environment of the Valley. These changes, especially in the context of predictable changed climate conditions, will create incentives for the incorporated city to grow and diversify the tax base. The fiscal incentives in land use decision making is well known; the Public Policy Institute of California has clearly stated that "land use decisions are now driven by their fiscal consequences."¹

While many California communities have incorporated and have done so with minimal consideration of environmental consequences, the facts lead to a different conclusion here. Olympic Valley is located in a particularly environmentally sensitive setting, quite different from the built out communities in major metropolitan areas of the State. Olympic Valley is a small place with a year-round residential population of less than 1,000 people and a tax base that is driven by a comparatively limited number of businesses, all of which are

¹ Jeffrey I. Chapman, *Proposition 13: Some Unintended Consequences*, Public Policy Institute of California, 1998.

largely dependent on the ski and tourism industry, again, quite different from the communities of many thousands with broad economies that have incorporated around California. The economy of Olympic Valley is particularly vulnerable to climatic conditions; the scientific consensus is that the climate is undergoing changes, and these changes will have material effects on the economy and environment of Olympic Valley. Olympic Valley differs from communities that are not economically dependent on snow-driven tourism.

It is reasonably foreseeable that in the unique situation of Olympic Valley, the future conditions under an incorporated city could be quite different from the conditions under a larger, more economically stable County government. In order to meet the requirements of CEQA, the environmental implications of these differences must be addressed in a comprehensive EIR.

Adequacy of the NOP

Requirements for the content of a Notice of Preparation (NOP) are established by PRC §21080.4 and more specifically in State CEQA Guidelines §15082 which states that an NOP must include:

- A description of the project,
- The location of the project, and
- The probable environmental effects of the project.

The NOP includes both a description of the proposed project and the location of the project, including maps of the proposed boundaries of the proposed city of Olympic Valley. However, rather than a description of the probable environmental effects, the NOP includes a general description of the analyses that LAFCO intends to include in the EIR. This is expressly acknowledged in the NOP which states that "Placer County LAFCO has reviewed the proposed project application and has determined that the EIR should address the topics identified below."

A more specific example is provided on page six of the NOP, which states the following regarding Climate Change: "the Climate Change chapter will include an in-depth discussion of climate change regulations, past to present, as well as a full range of scientific findings related to climate change. The relationship between the proposed project and global climate change will be evaluated." This statement fails to indicate the lead agency's assessment of the probable environmental effects of the project related to climate change. It is impossible to tell whether the intent is to analyze climate change in terms of potential emissions of greenhouse gases, changes related to the predicted effects of climate change on local and regional meteorology, hydrology and snow pack, or some other aspect of climate change. The same lack of discussion of probable environmental effects is found in the NOP's discussion of other issues intended for inclusion in the EIR: Land Use and Planning, Public Services, Utilities, and Cumulative Impacts. In this way, the NOP fails to meet the basic requirements established in State CEQA Guidelines §15082 and makes opaque LAFCO's intended focus of analysis in the EIR.

CEQA Requirements for an EIR

The State CEQA Guidelines provide the framework in which LAFCO is required to consider the appropriate scope of analysis in an EIR. Section 15064(d) of the Guidelines states that

In evaluating the significance of the environmental effect of a project, the Lead Agency shall consider direct physical changes in the environment which *may* be caused by the project and reasonably

foreseeable indirect physical changes in the environment which *may* be caused by the project. [emphasis added]

The Guidelines clearly emphasize that the potential effects of an action must be viewed broadly, not simply related to what would occur in a limited interpretation of the action, but in a broad sense considering what may occur as a result of the action. This necessarily requires a careful and expansive interpretation of effects that could reasonably be forecast to occur. The courts have reinforced this interpretation of CEQA as being broadly protective of the environment. As early as 1972, and repeatedly in opinions issued by the California Courts of Appeal and the State Supreme Court, the courts have affirmed that CEQA is "to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."²

This broad, protective interpretation of CEQA is reflected in Guidelines §15063(b) which states that an EIR is required whenever

"the agency determines that there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial ..."

An EIR also must address a broad range of types of impacts. Guidelines §15064(d) establishes that under CEQA a significant impact on the environment can be a direct or indirect effect of a proposed project. Social and economic effects, while not considered significant impacts in and of themselves, must be carefully examined in order to understand if they connect a proposed project to a physical effect on the environment (see Guidelines §15064(e)).

At times there is some degree of uncertainty about the likelihood of a project to cause an environmental effect. The Guidelines addresses this condition in §15064(g), which states that

"where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: *If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.*" [emphasis added]

Thus, the mere presence of uncertainty about a future effect does not immunize that effect from triggering the need for consideration in an EIR. Rather, uncertainty, where the possible outcomes are supported by evidence, is supposed to be fully explored in the EIR.

In order to implement CEQA so as to "afford the fullest protection of the environment," the appropriate scope of analysis in an EIR on the proposed incorporation of Olympic Valley must be viewed broadly and must consider the potential effects of incorporation in light of the reasonably foreseeable actions a city council would take after incorporation, particularly in light of the ongoing reasonably foreseeable changes in economic and environmental conditions in the region.

² *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259 [104 Cal.Rptr. 761, 502 P.2d 1049].

Reasonably Foreseeable Conditions

In its landmark opinion in *Laurel Heights Improvement Association of San Francisco, Inc. v. The Regents of the University of California*, the California Supreme Court directed that a CEQA document must address the environmental effects of reasonably foreseeable characteristics of a project and cannot be limited to only those aspects of the project that are well-defined at the time that the CEQA document is prepared.

“We hold that an EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.”³

As described in the Notice of Preparation, the newly incorporated city would continue to provide services at the same or similar level as currently provided by the County, and largely by the same providers as currently under the County.⁴ However, it is undeniable that the future elected decision makers in the incorporated Olympic Valley would not be bound by the intent of the incorporation proponents, but, rather, would be obligated to make decisions now and in the future for the good of the residents and businesses in the incorporated city based on conditions that exist at that time. As discussed below, numerous conditions can be expected to exist in the future that would result in decisions being made to encourage new development in the Valley, thereby increasing or making more reliable tax revenues to support the incorporated city.

Currently, services to Olympic Valley are provided by Placer County, which has a large and diverse tax base. As proposed the tax base for an incorporated Olympic Valley would be largely driven by transient occupancy and retail sales taxes that are generated by businesses in the Valley, and which are considerably driven by the ski industry. Factors that have, and could, affect the magnitude of future tax revenues include (1) the regional, state, and national economy, (2) the relative competitiveness of the Squaw Valley Ski Resort in the Tahoe regional ski market, and (3) the inherent volatility of revenue from an industry that depends largely on the overall health of the economy and on climatic conditions, particularly in light of the potential effect of continue to be affected by climate change.

Many scientists have studied the potential changes to the snowpack in the Sierra as a result of changes in climactic conditions. According to the California Climate Change Center (CCCC), a consortium of over 100 of California's most prominent climate scientists, future climatological models predict that “more precipitation will fall as rain instead of snow, and the snow that does fall will melt earlier, reducing the Sierra Nevada spring snowpack by as much as 70 to 90 percent.”⁵ The most recent assessment from the CCCC states that “[n]o consistent trend in the overall amount of precipitation has been detected, except that a larger proportion of total

³ *Laurel Heights Improvement Association of San Francisco, Inc. v. The Regents of the University of California* (1988) 47 Cal. 3d 376

⁴ Incorporate Olympic Valley FAQ Version 4.1, <http://www.incorporateov.org/faq-s>, October 2013. IOV states that there would be no change in the agency responsible for the provision of the following services: Animal Control, Emergency Medical, Fire Protection, Libraries, Police Protection, Public Transit, Trash Collection and Disposal, Water and Sewer, and Welfare and Child Protective Services. The following services that are currently provided by Placer County would be provided by the city of Olympic Valley solely or jointly with Placer County: Flood Control, Land Use Planning and Regulation, Parks and Recreation, Snow Removal, Roads Maintenance and Public Works, Visitor Services.

⁵ California Climate Change Center, *Our Changing Climate: Assessing the Risks to California*, CEC-500-2006-077, July 2006, page 6.

precipitation is falling as rain instead of snow.”⁶ According to the CCCC, “[e]arlier snowmelt, higher temperatures and longer dry periods over a longer fire season will directly increase wildfire risk.”⁷

The expected changes to future climate conditions are expected to have similar effects on ski resorts and related businesses outside of California as well. According to Daniel Scott, director of the Interdisciplinary Center on Climate Change at the University of Waterloo in Ontario, more than half of the 103 ski resorts in the Northeast will not be able to maintain a 100-day season by 2039.⁸

Climate change is one of a number of exogenous factors that will affect future decision making by the elected decision makers of an incorporated Olympic Valley. California continues to have an economy and tax system that will lead to volatile changes in tax revenues. According to the California Legislative Analyst’s Office, numerous factors indicate that “significant revenue volatility will continue to be a major characteristic of California’s tax system, absent major policy changes to the tax system’s structure.” Further, the LAO states that “[e]ven with tax reforms, it is likely that California would continue to face significant volatility in the future.” An example of this volatility is that in 1999-2000 the California General Fund revenues increased by as much as 20 percent, but then plunged by 17 percent in 2001-02.⁹

The vulnerability of the local economy has been noted previously. In a June 2007 study undertaken by the Placer County Redevelopment Agency, “[c]ommunities relying solely on one industry or employer are more vulnerable to economic shifts than those with a diverse economic base.”¹⁰ That study reported that the North Lake Tahoe Area, including Squaw Valley, with 37 percent of all earnings coming from the leisure industry, was economically less diverse than the following other ski-oriented communities: Mammoth Mountain, California; Vail, Colorado; Park City, Utah; Sun Valley, Idaho; and Aspen, Colorado.¹¹ According to the study, the lack of diversity of the economy makes the area, including the proposed incorporated City of Olympic Valley, particularly vulnerable to trends in tourism and travel. An incorporated city that would be completely dependent on one industry, and an industry that may be affected by predicted changed climate conditions, would have a revenue base that would be especially vulnerable and volatile.

Predictable factors such as changing economic business cycles or long-term climate change make it reasonably foreseeable that an incorporated city with revenues highly dependent on the just a few businesses tied to the ski industry will necessarily be required to undertake actions that would diversify the economic base of the incorporated city, and that such actions would invariably result in additional development and land use changes. Such changes can reasonably be predicted to potentially have numerous environmental effects.

⁶ California Climate Change Center, *Our Changing Climate 2012: Vulnerability & Adaptation to the Increasing Risks from Climate Change in California*, CEC-500-2012-007, July 2012, page 2.

⁷ Ibid, page 3.

⁸ Katharine Q. Seelye, *Rising Temperatures Threaten Fundamental Change for Ski Slopes*, The New York Times, December 12, 2012

⁹ California Legislative Analyst’s Office, *Revenue Volatility in California*, July 2005.
http://www.lao.ca.gov/2005/rev_vol/rev_volatility_012005.htm

¹⁰ Placer County Redevelopment Agency, *Economic and Redevelopment Strategies for Kings Beach and Tahoe City*, prepared by Economic and Planning Systems, GDeS Architecture & Planning, Hansford Economic Consulting, and Denise Duffy & Associates, June 2007, page 24.

¹¹ Ibid, Table 6, page 24.

An EIR Must Consider Reasonably Foreseeable Environmental Impacts

As established above, the courts have declared that lead agencies, when complying with CEQA, must “afford the fullest protection of the environment” and if there is substantial evidence supporting a fair argument that a proposed action *may* have a substantial adverse effect on the environment, an EIR must be prepared. In order to meet these requirements, (1) an EIR must be prepared for the proposed incorporation of Olympic Valley, (2) it must be broadly scoped so as to address all reasonably foreseeable environmental consequences of the incorporation, and (3) it must account for actions that the incorporated jurisdiction may take in the future to ensure revenues that will support service delivery at levels comparable to that currently provided by the County.

Given the current and reasonably foreseeable future environment as one that continues to experience shorter warmer winters and reduced snowpack, and in light of the lack of diversification that will be present in the economy of the new incorporated city, it is reasonably foreseeable that a new incorporated City of Olympic Valley would need to diversify its income stream and tax base to ensure the continuation of services at existing levels. Consequently, some additional future development must be assumed and evaluated, at least programmatically, so that the decision makers at LAFCO are able to make an informed decision on the Project.

The CEQA process invariably includes some level of uncertainty because it involves predictions of the future. Under CEQA it is proper to avoid unsubstantiated speculation. In fact, Guidelines §15145 states that, “[i]f, *after a thorough investigation*, a Lead Agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.” (Guidelines, §15145 [emphasis added].) In this case however, uncertainty about future conditions does not rise to the level of speculation. The Supreme Court has stated that

“The fact that precision may not be possible, however, does not mean that no analysis is required.”¹²

And reinforced its point by restating Guidelines §15144 which directs that

“While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.”

Numerous studies by noted experts, including professors from California’s most esteemed universities, many cited and attached to this letter, agree on the facts that are described above: (1) the economy in the region is vulnerable because of its dependence on ski-related tourism, (2) California’s system of revenue collection is volatile because of its reliance on sources that fluctuate from year to year, and (3) expected changes in climatic conditions are very likely to have material effects on the snowpack that drives so much of the local economy.

While there may be uncertainty surrounding the specific magnitude of these future changed conditions, it is not in any way speculative to conclude that these factors must be considered as potential economic and environmental drivers of actions of an incorporated city which could, in turn, have environmental consequences that rise to significant environmental impacts. Rather than turning away from uncertainty, here, the obligation of LAFCO is to first embark on “a thorough investigation” to use its best efforts to find out and disclose all that it reasonably can. (Guidelines, §15144.)

¹² *Laurel Heights Improvement Association of San Francisco, Inc. v. The Regents of the University of California* (1988) 47 Cal. 3d 376

As an example, it would be speculative to attempt in an EIR to predict exactly what future land use decisions will be made by a future city council. However, it would be entirely reasonable and appropriate, and consistent with methodologies used in program-level EIRs throughout California, for the EIR to examine existing land use patterns, holding capacity, demographic projections, and the like, to develop a programmatic future growth scenario for the city based on the need to ensure its ability to continue generating revenue to provide services within the new incorporated city, and to do so while responding to changing conditions. In order to evaluate the effects of the future growth scenario, the EIR would appropriately establish existing physical conditions and then describe how those conditions could be expected to change generally with new development.

A comparable approach was undertaken by the Sacramento County LAFCO in the Rancho Cordova Incorporation Draft Environmental Impact Report. The method used for the basis of the land use analysis is described below:

“... the environmental analysis assumes that the proposed incorporation would result in the urbanization of all developable areas in the project area, including land areas currently designated for rural and agricultural land uses. It is important to note that this assumed development pattern has been utilized to evaluate “worst-case” environmental effects of the project and that such development has not been proposed by the project applicants.”¹³

This is an approach and methodology that is tried and true, one that has been tested and validated by the courts, one that has been used in other incorporation EIRs in the region, and one that should be implemented in the Olympic Valley Incorporation EIR.

Probable Environmental Effects that Must be Addressed in the EIR

As we discussed in an August 11, 2014 memorandum to LAFCO, there is a wide array of probable environmental effects that must be considered in the EIR on the Olympic Valley Incorporation Project. For each of the issues discussed below, the EIR must thoroughly describe the environmental setting, the existing condition which forms the baseline against which environmental impacts will be compared.¹⁴ The analysis of each impact must discuss the direct and indirect effects of the proposed incorporation, and should present an assessment of Existing Plus Project conditions, which would constitute the Existing environment plus the future changed conditions within the proposed incorporated City of Olympic Valley. For each impact where under the Existing Plus Project conditions there is either an impact that is determined to be Less Than Significant, or Significant, the EIR must also evaluate the Cumulative impact, which would also take account of predicted future changes outside of the proposed incorporated City. Thus, in the Cumulative analysis, the EIR would account for the effects of the proposed incorporation of Olympic Valley in the context of changes to environmental conditions that are predicted due to growth and other changed conditions in Alpine Meadows, Tahoe City, Kings Beach, Truckee, and elsewhere in the region.¹⁵

First we discuss those issues that have been noted in the NOP to be included in the EIR.

Land Use and Planning

¹³ Sacramento County Local Agency Formation Commission, *Rancho Cordova Incorporation Draft Environmental Impact Report*, March 2001, page 4.2-24.

¹⁴ State CEQA Guidelines, §15125(a).

¹⁵ State CEQA Guidelines, §15130.

As describe in the NOP, the Land Use and Planning section, would focus on a comparison of the “proposed project’s consistency with the surrounding area adopted plans, policies, and ordinances, including the 1983 Squaw Valley General Plan and Land Use Ordinance, Placer County LAFCO policies and standards, and any other appropriate documents,” as well as consideration of potential land use incompatibilities. Important in this analysis is what type of changes are anticipated as a result of the proposed incorporation. In order to fully disclose the Land Use and Planning effects of the proposed project, the EIR must examine existing land use patterns, holding capacity, demographic projections, and develop one or more programmatic future growth scenarios based on the need to ensure its ability to continue generating revenue to provide services within the new incorporated city, and to do so while responding to changing conditions such as climate change and the need to diversify the city’s economy. The land use plan and zoning reflected in the Squaw Valley General Plan and Land Use Ordinance (SVGPLUO) represents a starting point, but the EIR should appropriately account for proposed developments (including the proposed Village at Squaw Valley Specific Plan and PlumpJack redevelopment), and existing entitlements and use permits (including Resort at Squaw Creek Phase 2 and Olympic Estates), as well as future development that could occur on vacant and undeveloped parcels throughout the Valley.

As noted below under Recreation, the County has, for a number of years, worked to advance a proposed Truckee River Corridor Access Plan that will provide a continuous and coordinated system of preserved lands and habitat, with a connecting corridor of walking, in-line skating, equestrian, bicycle trails, and angling and boating access from Lake Tahoe to the Martis Valley. The proposed project intends to include in the future incorporated city of Olympic Valley approximately six linear miles of the Truckee River corridor. The EIR should address how the proposed incorporation could affect the implementation of the Access Plan, and concomitant effects on river access, mobility, automobile use, and other factors that are intended to be addressed by the Access Plan.

Public Services and Recreation

The EIR must address the potential changes in the provision of public services to the residents and businesses within the proposed incorporated city. As noted above, since an incorporated City of Olympic Valley would have a much smaller tax base, and one that would be much more vulnerable to year-to-year changes in levels of tourism and retail sales at businesses in the city, the EIR should address how the provision of public services could be affected by these volatile changes in year-to-year revenues.

Fire Hazards. Olympic Valley is located in a Very High Fire Hazard Severity Zone currently designated as a State Responsibility Area. In the event of incorporation, the area will become a Local Responsibility Area, where the newly incorporated city of Olympic Valley will be responsible for providing fire protection and prevention services. The EIR must address the potential effects of the change in responsibility for fire protection services in a very high fire hazard zone such as Olympic Valley. Further, as noted above, the California Climate Change Center’s experts have concluded that expected climate change will increase the risk of wildfire (both frequency and intensity) in California. Thus, the EIR’s assessment of wildfire effects should not only address how the new incorporated city would provide fire protection and prevention services under existing conditions, but also how such services will be provided in reasonably foreseeable future conditions where climate change creates the potential for even more hazardous wildfires in the Valley. For this latter condition, it will be necessary for the cumulative analysis to assess the potential effects of incorporation in the context of changed future land uses as well as changed future wildfire conditions and risks.

Recreation. Winter and summer recreation is an important element of life in the Valley and in the Truckee River corridor. The County is currently working on advancing the completion of the Truckee River Corridor Access

Plan, which will improve access along the Truckee River corridor, from Tahoe City to Truckee, including the portion of the corridor that would be included in the proposed incorporated City of Olympic Valley. The EIR should explore how incorporation of the proposed City of Olympic Valley would affect the implementation of the Draft Corridor Access Plan. In addition, the EIR must address the proposed incorporated City's ability to build and operate recreational resources at levels that meet state requirements, as well as the thresholds that would become part of the new incorporated city's general plan.

Parks. There is only one public park in Olympic Valley, Squaw Valley Park, currently owned by the County. The EIR should explore how the proposed incorporated City of Olympic Valley would plan and provide for public parks and recreation facilities. The analysis should consider whether the proposed city would adopt requirements comparable to those provided for in the Quimby Act, and, if so, what would be the effects of the proposed city's variable tax base on the operations and maintenance of the parks and recreation facilities under its jurisdiction.

Utilities

The EIR's assessment of water impacts should draw on the projections of future land use scenarios for the Valley. Since it is currently unclear whether the proposed Village at Squaw Valley Specific Plan would be implemented in an incorporated City of Olympic Valley, the associated water supply infrastructure called for in the proposed Specific Plan, including new wells, should not be assumed in the assessment of the infrastructure that would be required to serve the incorporated city with adequate water in the future, and impacts on water supply and groundwater conditions that could result. Even if the SVPSD remains the water purveyor within the Valley, decisions regarding land use and development could affect the SVPSD's ability to adequately serve existing and future development. The EIR should include a discussion of the extent to which the proposal may result, directly or indirectly, in the wasteful, inefficient or unnecessary use of energy, as required in Appendix F of the State CEQA Guidelines, and recently reiterated by the Third District Court of Appeal in its recent decision in *California Clean Energy Committee v. City of Woodland*.

Climate Change

As presented above, there is an extensive body of science to establish that reasonably foreseeable future conditions will include changes to climatic conditions caused by human actions. The proposed incorporation of Olympic Valley has the potential to exacerbate climate change through increased emissions of greenhouse gases, and the environmental conditions that will exist in the reasonably foreseeable future, circumstances against which the environmental impacts of the project must be evaluated, will be affected by predicted changes to the climatic conditions in the region. It is very important that the assessment of climate change address both predicted changed conditions related to the hydrology and climate of the Valley, as well as the potential for land use changes that could increase greenhouse gas emissions.

It has been argued in other letters in response to this Notice of Preparation that changed climatic conditions, such as decreased snowpack and the concomitant effects on the economy and fiscal conditions of the proposed incorporated city, as well as the future environmental conditions in the Valley and region, represent effects of the environment upon the project. It has been further argued that such effects are outside the scope of analysis in CEQA pursuant to a decision by the California Second District Court of Appeal in *Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455, 473. The reasoning in that case has not been adopted or endorsed by the Third District Court of Appeal, the Court of Appeal that would hear any challenge to the present EIR, should one be filed. Further, this issue is currently under review by the California Supreme Court in the matter of *California Building Industry v. Bay Area Air Quality Management Dist.* [considering, under what

circumstances, if any, does CEQA require an analysis of how existing and reasonably foreseeable environmental conditions will impact future residents or users of a proposed project]. As such, we urge LAFCO to include the analysis in the EIR.

We are not suggesting that the EIR speculate about the effects of the environment on the project. Rather, LAFCO should consider the wealth of scientific information available demonstrating that future changes to climatic conditions will continue to occur within northern California, including warmer winters with less snowpack, and the corresponding changes in economic activity that are therefore also reasonably foreseeable, including fewer potential visitors; thus, representing the conditions against which the effects of the project should be evaluated. As such, it is not the effects of the environment on the project which must be evaluated, but rather (1) the project must be defined in light of the reasonably predictable future climatic conditions, and (2) the effects of the project must be evaluated against a baseline that reflects reasonably predictable and foreseeable future climatic conditions. Thus, the EIR must address climate change impacts; as noted below.

Changed Climate Conditions. In the coming decades, climate change will result in meteorological and hydrological changes that are predicted to result in substantive decreases in snowpack. These reasonably foreseeable conditions should be documented in the EIR, including potential changes to hydrology, surface and groundwater conditions, and economic conditions of the Valley. Clear documentation of these anticipated changes will be important to understand future cumulative conditions in the Valley, against which the potential effects of the proposed Incorporation Project must be considered.

Greenhouse Gas Emissions. The EIR must provide a comprehensive examination of how land use changes that could be affected by incorporation could contribute to increased greenhouse gas emissions. It should be noted that while most GHGs are generated by transportation sources, other sources of greenhouse gas emissions are the operation of water delivery systems, energy generation, and building operations. Each of these factors must be considered in the EIR. Because the State's goal is not to simply avoid increased GHGs, but to roll back emissions to 1990 levels by 2020, and further reductions by 2050, the EIR must include a GHG reduction plan, coordinated with the Placer County Air Pollution Control District and consistent with the PCAPCD CEQA Handbook Appendices F and G, that describes how the newly incorporated city would mitigate greenhouse gas emissions and contribute to the State's achievement of the goals of AB32.

In addition to the issues that are generally addressed in the NOP, it is important that the EIR also fully consider the following issues that will be affected by the proposed creation of a newly incorporated city in Olympic Valley.

Population, Employment and Housing

Based on the future growth scenarios developed for the Land Use analysis, the EIR must present how key socioeconomic characteristics of the incorporated City may change, in terms of total population, employment, housing characteristics, including affordability, and jobs/housing relationship. Because of its importance to such environmental issues as mode of transportation, air quality, greenhouse gas emissions, and energy demand, the assessment of jobs/housing should discuss housing affordability as it relates to the important relationship between estimated housing costs and employment income levels. Often housing affordability is considered to be purely a socioeconomic concern and not related to physical environmental effects. In the case of Olympic Valley, lack of housing affordable to seasonal and other low-wage workers has effects on transportation, and relatedly on air pollution emissions, greenhouse gas emissions, noise, safety, and other related environmental issues. Thus, a

thorough discussion of the effects of housing affordability and jobs/housing match is important to include in the EIR.

The Sacramento Area Council of Government's (SACOG's) Regional Housing Needs Plan 2013-2021 identifies a requirement for 3,044 very low, low, and moderate income housing units in unincorporated Placer County (not including the 214 such units required in the Tahoe Regional Planning Area of Placer County).¹⁶ Since every incorporated city is designated in the plan for a Regional Housing Needs Allocation (RHNA), it is logical to conclude that a portion of this allocation will necessarily be required to be met in the proposed incorporated city of Olympic Valley. As part of this assessment, the EIR must identify the RHNA expected that would be required for a newly incorporated Olympic Valley, and the environmental consequences of providing such housing within the city.

Further, as proposed, the newly incorporated city of Olympic Valley would be subject to State Housing Law, including requirements to plan and provide for very low, low, and moderate income housing through a Housing Element (see California Government Code §65580-65584.07). In addition, the State Health and Safety Code (§50105-50106) requires that a subset of very low income households qualify as affordable to extremely low income households. State law also requires that incorporated jurisdictions demonstrate that existing or proposed permit processing, development, and management standards encourage and facilitate the development of emergency shelters. As a matter of law, the new incorporated city would be required to provide sites for these required housing allocations. Currently, the obligations to comply with State Housing Law are met by Placer County, and Placer County's Housing Element has been approved by the State Department of Housing and Community Development. The foreseeable environmental consequences of complying with State Housing Law, including provision of the newly incorporated city's obligations to provide affordable housing, include traffic, air pollution, loss of habitat, water demand, and the like. These effects must be disclosed in the EIR.

Transportation and Circulation

Future growth in the City of Olympic Valley would materially affect and be affected by changes in the regional transportation system. Based on the future land use growth scenarios, the EIR should assess how incorporation of the City of Olympic Valley could affect all modes of transportation in the Valley and in the Highway 89 corridor from Tahoe City to Truckee. The EIR should include an analysis that predicts how levels of investment in roadway infrastructure and transit service could vary under different future scenarios. The ability of a newly incorporated city to invest the fiscal resources in expansion of all aspects of the transportation system could have effects not only on such critical measures as the level of service on roads and at intersections in the vicinity, but also on vehicle miles travelled (VMT; a new measure that will soon be a requirement for all EIRs in California). As encouraged by the recent publication from the Governor's Office of Planning and Research, *Updating Transportation Impacts Analysis in the CEQA Guidelines: Preliminary Discussion Draft of Updates to the CEQA Guidelines Implementing SB 743*, vehicle miles travelled is a better and more important measure of the ways that transportation affects the environment. According to the publication,

“Traffic studies used in CEQA documents have typically focused on one thing: the impact of projects on traffic flows. By focusing solely on delay, environmental studies typically required projects to build

¹⁶ Sacramento Area Council of Governments, *Regional Housing Needs Plan 2013-2021*, Table 1, page 4, September 20, 2012.

bigger roads and intersections as “mitigation” for traffic impacts. That analysis tells only part of the story, however.

“Impacts on pedestrians, bicyclists and transit, for example, have not typically been considered. Projects to improve conditions for pedestrians, bicyclist and transit have, in fact, been discouraged because of impacts related to congestion. Requiring “mitigation” for such impacts in the CEQA process imposes increasing financial burdens, not just on project developers that may contribute capital costs for bigger roadways, but also on taxpayers that must pay for maintenance and upkeep of those larger roads. Ironically, even “congestion relief” projects (i.e., bigger roadways) may only help traffic flow in the short term. In the long term, they attract more and more drivers (i.e., induced demand), leading not only to increased air pollution and greenhouse gas emissions, but also to a return to congested conditions.”¹⁷

VMT has clearly been recognized as the more environmentally protective measure of transportation system performance, and should be included in the EIR. However, the timing of the formal change to the Guidelines is currently unclear, and thus the EIR should include an assessment of both the traditional LOS measure of performance, and the new VMT measure of effect. The analysis of transportation effects under both of these measures should assess the effects of future growth scenarios and levels of investment in transportation system improvements in the incorporated city during the peak winter season as well as the peak summer season, and, under CEQA, must be assessed for Existing Plus Project and Cumulative scenarios.

While vehicle miles traveled may reflect regional concerns, and provide the framework for understanding how vehicular use may affect emissions of criteria pollutants and greenhouse gasses, transportation impacts are also felt on a local level. Thus, the effects of snow removal, a service that is proposed to be taken over by the new City of Olympic Valley, could have material effects on both roadway capacity and safety. Safety impacts, during all seasons, are impacts that must be considered in the EIR.

Air Quality

Because the proposed incorporation could affect growth and transportation in the Valley, it will be important that the EIR consider the correlative effects on air pollution. The EIR should estimate the amount of criteria pollutants, including small particulate matter (PM₁₀ and PM_{2.5}), that would be emitted from traffic travelling to and from existing and future uses in the Valley. The analysis should be undertaken for Existing, Existing Plus Project, and Cumulative conditions. In the event that significant impacts are identified, mitigation measures should be described, including estimates of the emission reduction value of each measure, consistent with the recent Court of Appeals decision in *Sierra Club v. County of Fresno/Friant Ranch, L.P.*

Biological and Wetland Resources

There are numerous sensitive habitats in and around the Olympic Valley area, including conifer forest, Squaw Creek, riparian and meadow habitats. Jurisdictional wetlands are also present throughout the valley. Federally and State-listed species that could be present in the Valley include Sierra Nevada yellow-legged frog, bald eagle, willow flycatcher, yellow warbler, and Sierra Nevada snowshoe hare. Habitat for numerous plants that are listed by the California Native Plant Society also occurs. The EIR should consider the potential effects of the growth

¹⁷ Governor’s Office of Planning and Research, *Updating Transportation Impacts Analysis in the CEQA Guidelines: Preliminary Discussion Draft of Updates to the CEQA Guidelines Implementing SB 743*, August 6, 2014, page 5.

scenarios described in the Land Use chapter on wetlands and uplands, and other sensitive habitats, and protected and sensitive plant and animal species that live, or forage in the Valley.

Hydrology and Water Quality

Squaw Creek and its tributaries provide year-round and seasonal sources for water for wildlife and habitat for aquatic and semi-aquatic species. Flooding has been a historical problem in Olympic Valley, affecting the North and South forks of Squaw Creek, the Squaw Valley Ski Area and commercial property, including PlumpJack (Squaw Valley Inn) and Squaw Valley Lodge, and running the entire length of Olympic Valley to the Truckee River confluence. Due to excessive sediment load, Squaw Creek is listed by the Lahontan Regional Water Quality Control Board as an impaired water body in accordance with Clean Water Act Section 303(d). The Truckee River is also an impaired water body and is included on the same listing. The EIR should address how the proposed incorporation of the City of Olympic Valley could affect future flooding conditions throughout the Valley, and how the future land use scenarios would affect the ability to meet the established TMDL thresholds for Squaw Creek.

Visual Resources and Aesthetics

The natural aesthetics and visual quality of the Squaw Valley area are affected by the quality, height, amount, and design of the built environment. Under the future growth scenarios that are developed as part of the Land Use analysis, the EIR should describe how the visual quality and character of the Valley could change as the result of future growth. Important scenic view corridors should be identified, including views from the two miles of Squaw Valley Road, which is designated a scenic roadway by Placer County. The EIR should evaluate whether views from Squaw Valley Road and other key locations within the Valley could be substantially degraded by future growth, and discuss what mechanisms the new city might use to address impacts on views, including night-time views, and visual quality.

Cultural Resources

Previous studies have identified significant cultural resources within the proposed boundaries of the incorporated City of Olympic Valley, including extensive pre-historic resources dating back thousands of years. These resources could be at risk and adversely affected by future development that could be affected by incorporation. The potential for significant impacts due to incorporation should be fully explored in the EIR.

Growth Inducement

The Land Use and Planning, and Population, Employment and Housing discussions presented above outline issues related to growth and urbanization effects in the proposed incorporated city of Olympic Valley. The close relationship between residential and non-residential uses in the Valley and interdependent uses in nearby communities is well known and documented. Employees of Valley businesses frequently live in Truckee or other communities, and, reciprocally, residents of the Valley are forced to drive to those same nearby communities to shop, find services, and do business. CEQA also requires consideration of "the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment."¹⁸ In order to meet this requirement, the EIR should address how the future land use scenarios could induce or redirect growth, including development of housing or community-serving commercial uses, in neighboring communities, including Truckee, Tahoe City, and Kings Beach. The

¹⁸ State CEQA Guidelines, §15126.2(d).

EIR should assess the potential effects of the induced or redirected growth on the environment, in terms of traffic, air pollution, noise, and other related and predictable effects.

Alternatives

A central element of an EIR is the evaluation of alternatives that could achieve most of the basic objectives of the proposed project while avoiding one or more significant environmental impacts. For the EIR on the Olympic Valley Incorporation Project, the evaluation will necessarily require a thoughtful exploration of how the CEQA-required No Project Alternative differs from the land use scenarios that could occur under the proposed incorporation. The No Project Alternative should assume continued provision of services by Placer County, and should reflect the County's ability to provide services in light of its much more diverse tax base.

In addition, correspondence from the project proponent indicates that the boundaries of the incorporation could be altered based on the desire of some individual property owners. These alternative boundaries should be evaluated and the relative environmental consequences of different boundary configurations for the incorporated jurisdiction should be compared. Importantly, if significant environmental effects are identified, alternative configurations for the proposed incorporation should be evaluated, including (1) expanded boundaries that would enlarge and diversify the tax base for the proposed incorporated city, and (2) different delivery systems for environmentally important public services and infrastructure. At a minimum, an alternative should be included that excludes the Squaw Valley Ski Resort from the proposed incorporated city. Such an alternative will likely respond to potential issues associated with changes to fire hazard responsibility areas. By excluding the extensive mountain acreage of the Ski Resort from the proposed city, the Ski Resort property would remain within a State Responsibility Area, where the State would remain financially responsible for fire protection and prevention.

While we understand the rationale behind the proposal to make the city boundaries coterminous with Squaw Valley Public Services District (SVPSD) boundaries, the result is that the proposed city would include approximately six miles of the Truckee River corridor. The corridor includes State Route 89, the Truckee River, and a number of riverside rural homes. The inclusion of this area in the incorporated city could interfere with future improvements of SR 89, and completion of the Truckee River trail and other aspects of the County's proposed Access Plan. We suggest that the EIR also include consideration of an alternative that terminates the boundaries of the incorporated city at the west end of the intersection of SR 89 and Squaw Valley Road.

Other Issues

The discussion above does not constitute a complete and comprehensive list of issues that should appropriately be considered in an adequate EIR. Rather, it simply points out some of the most prominent issues of concern that should necessarily be addressed in the incorporation EIR. Others that could be affected by future changed conditions in an incorporated Olympic Valley would include such considerations as traffic and construction noise, wastewater conveyance and treatment, the provision of public schools (including the traffic and related effects of transport of school children to out-of-valley schools), and the like.

PLACER COUNTY
LOCAL AGENCY FORMATION COMMISSION

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STAFF REPORT

DATE: February 4, 2015

TO: Chairman Weygandt, Commissioners Allen, Holmes, Kirby, Rudd, Treabess, Ucovich. Alternate Commissioners Duran, Gray, Nader, Sheehan.

FROM: Kris Berry, AICP, Executive Officer 

SUBJECT: Fair Political Practices Commission Conflict of Interest Code.

RECOMMENDATION:

It is recommended that the Commission approve the attached Fair Political Practices Commission Conflict of Interest Code attached as Exhibit "1."

SUMMARY:

The Fair Political Practices Commission reform act of 1974 requires that each public agency adopt a local conflict of Interest Code. Although a code has previously been adopted by the Commission, it has not been modified by the Commission since its original adoption in 2002.

The Code must specify the positions that make or participate in making decisions and then assign disclosure categories specifying the types of financial interest to be disclosed. Our current code only specifies the Executive Officer, the Public Member and alternate Public Member, based on the fact that the other categories of membership in the Commission already file 700 forms for their respective agencies. When the code was written, Counsel was not included because LAFCO was represented by County Counsel, which already reported to the County.

To accurately portray the composition of the Commission and reflect the independence of the Commission, each category of Commissioner as well as the Executive Officer and Counsel have been designated as reporting individuals. The designated individuals are engaged in a high level of decision-making and authority and are considered to be in disclosure category number 1, the highest level of disclosure.

Exhibit "1" Proposed Conflict of Interest Code.

Resolution 2015 – 01

**RESOLUTION OF THE PLACER COUNTY LOCAL AGENCY FORMATION
COMMISSION ADOPTING THE FAIR POLITICAL PRACTICES COMMISSION
CONFLICT OF INTEREST CODE**

WHEREAS, The Political Reform Act of 1974, as amended (“the Act”), California Government Code §8100 et seq., requires in Government Code §97300 that each agency subject to the Act, including the Placer County Local Agency Formation Commission, adopt a local Conflict of Interest Code; and

WHEREAS, the act provides in §87302 that each such local Conflict of Interest Code shall designate positions within each agency subject to the Code and further designate the types of reportable interests which must be disclosed by any such designated employee; and

WHEREAS, the Fair Political Practices Commission in administering the Act has adopted a regulation (2 California Code of Regulations §18703) which permits agencies subject to the Act to adopt by reference the Model Conflict of Interest Code developed by the Fair Political Practices Commission; and

WHEREAS, the Commission now desires to adopt said Model Code;

NOW, THEREFORE, BE IT RESOLVED by the Commissioners of the Local Agency Formation Commission as follows:

1. That pursuant to the provisions of Government Code §87300 and (Title) 2 California Code of Regulations §18730, the Placer County Local Agency Formation Commission hereby adopts the Fair Political Practice Commission’s Model Conflict of Interest Code as set forth currently or as may hereafter be amended, as the local Conflict of Interest Code of the Commission (the “Code”).
2. That the Code shall apply and be applicable to those persons in the service of the Placer County Local Agency Formation Commission as listed below. Each person occupying each designated position shall be assigned to a disclosure category based on the descriptions also set forth below.
3. That each person in each designated position, as listed below, shall report, as required by the Code, all reportable interests for their particular disclosure category.

4. Designated Positions	Disclosure Category:
Executive Officer	1
Counsel	1
Board of Supervisors Member	1
Alternate Board of Supervisors Member	1
City Member	1
Alternate City Member	1
Special District Member	1
Alternate Special District Member	1
Public Member	1
Alternate Public Member	1

Disclosure Categories:

1. Investments and business positions in business entities, and sources of income, including loans, gifts, and travel payments, from sources of the type that provide services, supplies, materials, machinery, or equipment of the type utilized by the Commission.
2. Investments and business positions in business entities, governmental entities and non-profits that are regulated by the Commission.
3. Investments and business positions in business entities, and sources of income, including loans, gifts, and travel payments, from sources of the type that engage in the acquisition, disposal, or development of real property within the Commission's jurisdiction.
4. Investments and business positions in business entities, and sources of income, including loans, gifts, and travel payments, from sources of the type that regularly engage in the preparation of environmental impact statements or reports.
5. Interests in real property located within the jurisdiction of the Commission or within two miles of the boundaries of the jurisdiction of the Commission.
6. Investments and business positions in business entities, and sources of income including loans, gifts, and travel payments, from sources of the type that receive financial or technical assistance from the Commission.

Passed and adopted this February 11, 2015 upon a vote of the members of the Local Agency Formation Commission, then in attendance and regularly convened as follows:

Ayes;

Noes:

Abstain:

Absent:

Signed and approved after adoption:

Chair

Attest:

Kristina Berry, AICP, Executive Officer