

**Local Agency Formation Commission (LAFCo)
Agenda for a Regular Meeting**

Thursday, March 16, 2017 ... 9:30 a.m.

Board of Supervisors Chamber — Nevada County Administrative Center
950 Maidu Avenue, Nevada City, CA

The Commission may take action upon any item listed on the agenda at any time during the meeting. Scheduled items will normally be heard at the time noted, but the Commission may interrupt or defer discussion in order to deal with other matters.

Agenda materials submitted for the Commission's attention at least 72 hours before the meeting are available for review at the LAFCo office and are posted online, accessible via link from the LAFCo website <www.mynevadacounty.com/nc/lafco>.

Members of the Commission may participate in the meeting by video teleconference from the following remote site: District 5 Supervisors Conference Room, east (left) of the Nevada County Sheriff's Substation, 10879 A Donner Pass Road, Truckee, California. Pursuant to Section 54953 of the Government Code, Commissioners participating at the remote site shall have the same rights to participate as if they were present at the primary meeting site. Members of public may also attend the meeting at the site specified above and participate in the meeting as if they were at the primary meeting site.

1. Call to Order/Flag Salute/Roll Call

Commissioners

Richard Anderson (County)
Patrick Flora (Cities)
Kurt Grundel (Districts), **Vice-Chair**
Evans Phelps (Cities)
Josh Susman (Public)
Hank Weston (County), **Chair**
Nick Wilcox (Districts)

Alternates

Dan Miller (County)
Ed Beckenbach (Districts)
Gloria Glenn (Public)
Ben Aguilar (Cities)

Staff

SR Jones, Executive Officer
P.Scott Browne, Legal Counsel
Deborah Gilcrest, Clerk to the Commission

2. Public Comment

At this time, members of the public may address the Commission on any matter not on the agenda. Testimony related to an item on the agenda should be presented at the time that item is considered.

3. Consent Calendar

These items are expected to be routine and noncontroversial. The Commission will act upon them at one time without discussion. Any Commission member, staff member or interested party may request that an item be removed from the consent calendar for discussion.

3.1. Minutes of February 23, 2017 

4. Business/Action

4.1. Workshop – Sphere of Influence Update for Nevada City (*Note: this item continued from Feb. 23, 2017*) 

The Commission will continue taking public comment at this workshop to consider and provide direction to staff regarding the sphere of influence update, including the

recommended sphere of influence boundary. The Commission will consider public comment, discuss the proposed update and provide direction to staff as to completion of the process, including compliance with the California Environmental Quality Act. Formal adoption of the Sphere of Influence will not take place at this meeting. Pending completion of the environmental document, a formal public hearing to adopt an update to the sphere of influence will be scheduled for a later date.

5. **Announcements (Informational Items Only)**

Pursuant to Government Code Section 54954.2, Commission and staff members may make brief announcements or report on activities. Commission members may also provide a reference to staff or other resources for factual information, request staff to report back to the Commission at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.



Public Comment

Members of the public may address the Commission regarding items not appearing on the agenda, as well as any item that does appear on the agenda, subject to the following restrictions:

- Items not appearing on the agenda must be of interest to the public and within the Commission's subject matter jurisdiction.
- No action shall be taken on items not appearing on the agenda unless otherwise authorized by Government Code Section 54954.2 (known as the Brown Act or California Open Meeting Law)
- The total amount of time allotted for receiving public comment may be limited to 15 minutes.
- Any individual's testimony may be limited to 5 minutes. Time to address the Commission will be allocated on the basis of the number of requests received.

Public Hearings

Members of the public may address the Commission on any item appearing on the agenda as a Public Hearing. The Commission may limit any person's input to five minutes. A person may provide a written statement in lieu of or to supplement any oral statement made during a public hearing.

Accessibility

An interpreter for the hearing-impaired may be made available upon request to the Executive Officer 72 hours before a meeting. The location of this meeting is wheelchair accessible.

Disclosure and Disqualification Requirements

A LAFCo Commissioner must disqualify herself or himself from voting on an application involving an "entitlement for use" (such as an annexation or sphere amendment) if the Commissioner has received, within the last twelve months, \$250 or more in campaign contributions from the applicant, any financially interested person who actively supports or opposes an application, or an agent (such as an attorney, engineer, or planning consultant) representing the applicant or an interested party. The law (Government Code Section 84308) also requires any applicant or other participant in a LAFCo proceeding to disclose the contribution amount and name of the recipient Commissioner on the official record of the proceeding. This can be done in advance (in writing) or at the beginning of the hearing either orally or in writing.

The law also prohibits an applicant or other participant from making a contribution of \$250 or more to a LAFCo Commissioner while a proceeding is pending or for three months afterward.

*LAFCo Office Located at: 950 Maidu Avenue ... Nevada City, California 95959
Telephone: 530-265-7180 ... Toll Free: 888-846-7180*

Any person or group that contributes or expends \$1,000 or more in support of or in opposition to a proposal before Nevada LAFCo, during either the application and hearing stage or the protest hearing stage, must disclose such contributions and expenditures through the County Elections Office, 950 Maidu Avenue, Nevada City, CA 95959.

**LOCAL AGENCY FORMATION COMMISSION (LAFCo)
OF NEVADA COUNTY
DRAFT MINUTES**

Special Meeting
February 23, 2017

Board of Supervisors Chambers – Nevada County Administrative Center
950 Maidu Avenue, Nevada City, CA
9:30 a.m.

Commissioners Present:

Richard Anderson (County)
Patrick Flora (City)
Kurt Grundel, **Vice Chair** (District)
Evans Phelps (City)
Josh Susman (Public)
Hank Weston, **Chair** (County)
Nick Wilcox (District)

Alternates Present:

Ben Aguilar (City)
Ed Beckenbach (District)
Gloria Glenn (Public)
Dan Miller (County)

Staff Present:

S.R. Jones (Executive Officer)
Deborah Gilcrest (Commission Clerk)
P. Scott Browne (Counsel)

Commissioners Absent:

None

Call to Order/Flag Salute/Roll Call

Chairman Weston asked outgoing Commissioner Nate Beason to lead the Pledge of Allegiance. The Commission Clerk called the roll and noted a quorum was present. Chairman Weston asked staff if there were any changes or additions to the agenda. The Executive Officer asked that Item 6.1 --- the 2015-2016 Audit Report, be heard prior to the Commission’s first Public Hearing.

Member Changes

Chairman Weston acknowledged the service of two outgoing Commissioners: Commissioner Nate Beason and Commissioner Howard Levine. Chairman Weston welcomed two new Commissioners to LAFCo: City Member Ben Aguilar and County Member Dan Miller.

Public Comment

Chairman Weston announced this is the time for any members of the public to address the Commission on any matter not on the agenda. Testimony related to an item on the agenda is to be presented at the time designated on the agenda. No public comments were received.

Consent Calendar

Chairman Weston announced items listed on the Consent Calendar: Item 4.1 – Minutes of November 3, 2016; and Item 4.2 – Second Quarter Budget Status Report for FY 2016-2017. The Chair invited any member of the public, the commission or staff to pull any item from the calendar for further discussion. No such request was made; the Chair asked for a motion.

MOTION was made by Commissioner Susman to approve the Consent Calendar with no amendments or additions. **MOTION** was seconded by Commissioner Anderson and passed unanimously.

Presentation of the Audit for Fiscal Year 2015-2016

Chairman Weston asked LAFCo's new auditor, Sandy Sup of Fechter and Company, to present the firm's audit of Nevada LAFCo for FY 2015-2016. Ms. Sup presented the audit and no questions or comments were raised. A voice vote was taken to accept the FY 2015-2016 Audit.

County Sanitation District (Penn Valley Zone): Wildwood Commercial Center- Annexation and Sphere of Influence Amendment

Chairman Weston asked LAFCo's Executive Officer SR Jones to present her staff report considering the annexation of Wildwood Commercial Center to the County Sanitation District and a concurrent amendment to the affected Sphere of Influence.

Jones explained the proposal involves a commercial center located on Pleasant Valley Road, which would be annexed to the County Sanitation District. She explained that the territory is presently developed for commercial and light industrial uses, and is served by two private wastewater systems, with the four parcels located at 10161-99 Commercial Avenue being connected to a community leachfield located on one of the parcels, while the two businesses at 10067 Pleasant Valley Road share a community disposal system with the neighboring property to the north, with effluent from the system being pumped to a community leachfield located across Pleasant Valley Road. She added that the District has provided a Will Serve letter indicating it has adequate capacity to provide service and providing support for the annexation.

Jones noted the owner of the property which shares the system used by the businesses at 10067 Pleasant Valley Road has not agreed to participate in the annexation and intends to continue to utilize the existing system. She added that the Sanitation District staff is unaware of any technical difficulties that would impair the connection of the one property to the district's system while the other continues to use the existing private system.

Jones explained that the subject territory would be connecting to the new sewer line that the District is installing to connect the Penn Valley and Valley Oak Court systems to the Lake Wildwood Treatment Plant. She added that work on the pipeline connection has already commenced, and is expected to be completed in late 2017. Connection of the annexation area would take place following the completion of the pipeline project.

Jones further explained that because the subject territory is not included in the County Sanitation District Sphere of Influence, a sphere amendment is necessary before the Commission may approve the annexation. Staff's recommendation is to bring the neighboring property that is not

participating in the annexation into the sphere, in recognition of the potential for a subsequent annexation request.

Jones noted that the proposal appears to be generally consistent with LAFCo law and Commission policy, except for the omission of the neighboring property. Although the Commission has the authority to modify the boundaries to include the omitted property, Jones noted that the neighboring property already has the service (via its private system), which means the Commission must balance competing policy objectives of avoiding piecemeal annexations with avoiding annexations of areas that do not require the agency's services. Since the neighboring property owner has not participated in the cost of the proposal, she recommended the Commission may allow the exemption to policy by approving the annexation without the omitted property. She further explained that the proposal appears to qualify for categorical exemption to the California Environmental Quality Act under Class 19, which covers annexation of existing facilities and lots for exempt facilities. Factors supporting this conclusion were discussed in the staff report and incorporated into draft resolution

Chairman Weston asked the Commissioners if they had any questions regarding the staff report. No one asked any questions.

Chairman Weston then opened the public hearing. No questions or comments were presented.

Chairman Weston closed the public hearing and asked for a motion on the two Resolutions presented.

Commissioner Susman made a MOTION to approve Resolution 17-01 and 17-02, respectively approving an amendment to the County Sanitation District Sphere and approving annexation of the Wildwood Commercial Center to the County Sanitation District. MOTION was seconded by Commissioner Grundel, and passed unanimously.

- **Workshop – Sphere of Influence for Nevada City**

Chairman Weston began the workshop by acknowledging the controversial nature of the item, adding that the Commission today will be taking this up as a workshop item and that no action will be taken today. The workshop is intended to present recommendations and hear comments from agencies and the public, and to provide further direction to staff. Chairman Weston explained that he will conduct the item as follows: LAFCo staff will present recommendations and Commissioners will ask for clarifications. Then, Nevada City staff will be invited to present their recommendation, and again the Commissioners will have opportunity to seek clarifications. After the city's presentation, the Chair will open the meeting to public comment, at which time any member of the public can address the commission.

SR Jones, LAFCo's Executive Officer presented her report (which includes a two-chapter excerpt from the Sphere of Influence Plan Update) and highlighted the relevant aspects of LAFCo law and Commission policy. Jones stated the sphere is a guide for the logical and orderly development and coordination of local governmental agencies. She added that LAFCo law defines a sphere of influence as the probable physical boundaries and service area of an agency, as determined by the Commission and pointed out that the sphere denotes the area the City will annex and where the City would provide services as well as land use regulation.

Jones explained that the law requires the Commission to make determinations on five factors when taking action on a sphere of influence:

1. Present and planned land uses in the area.
2. Present and probable need for public services and facilities in the area.
3. Present capacity of public facilities and the adequacy of public services that the agency provides.
4. The existence of any social or economic community of interest the commission deems relevant.
5. For any Disadvantaged Unincorporated Communities within the sphere, the present and probable need for water, wastewater and structural fire protection.

She noted that Commission policy on sphere of influence boundaries states that the Commission will not include lands that are unlikely to require the services provided by the agency, for example, lands not designated for development by the applicable General Plan, territory where development is constrained by topographical features, or areas where the projected and historical growth rates do not indicate a need for service within the sphere timeframe. Policy also states that LAFCo will not include areas which cannot feasibly be served by the agency within the sphere timeframe. She further explained that Commission policy establishes that a sphere plan must include a map and phased plan for annexation of the sphere territory 20 years hence, and identifying a near term sphere for lands expected to be annexed within 5 years, and a long-term sphere for lands likely to be annexed within the 20-year timeframe.

She explained that the original sphere of influence for the City had been adopted by LAFCo in 1983, and that in 2008, the Commission had updated the sphere, but that update had been informational and that the Commission had made no changes to the sphere boundary. She called the Commission's attention to the discussion in the staff report outlining the changes in LAFCo law, Commission policy and local government circumstances that had taken place since the adoption of the original sphere.

Jones noted that the City's current boundaries include approximately 1224 acres in 1761 parcels, while the sphere of influence presently includes 2900 acres in 950 parcels, which essentially provides for the City to triple in size. She explained that the recommended sphere boundary includes 1,584 acres in 401 parcels, providing for the city to more than double in size. She noted that these figures include the two BLM properties on which the City's water treatment plant are located as well as the adjacent Sportsmen's Club, which is connected to the City's water system. She described the areas included in the recommended sphere, which were listed in the report.

Jones explained that the lands recommended for removal from the sphere and instead designated as Areas of Interest generally consisted of parcels that are already developed, mostly for residential use, and have no need for urban services, as well as lands that are in public ownership and unlikely to develop and require urban services. Many of the developed properties have private septic systems and receive treated water from NID (or use private wells). These areas recommended for removal and designation as Area of Interest contain 1245 acres in 553 parcels. Designating these properties as an Area of Interest would ensure the City would be notified of any development projects.

Chairman Weston asked the Commissioners if they had questions regarding staff's recommendation.

Commissioner Anderson asked Jones to distinguish between long term and short term sphere.

Jones answered that "Long Term" is a 20-year projection, and that Near Term term is development which is anticipated within the following five years; or before the next scheduled SOI update.

Commissioner Anderson then asked the EO to confirm that these definitions were from Commission policy and not included in the statute. Jones confirmed that Commissioner Anderson was correct.

Commissioner Wilcox inquired regarding the practical difference between an Area of Interest and a sphere. He further inquired about the relative loss of control the city may experience, asking staff to comment on this concept.

Nevada LAFCo's Counsel, Scott Browne, explained that there is a difference; the County's General Plan provides for consistency with the City's General Plan within the Sphere of Influence. Browne further pointed out that the Area of Interest designation is more of a signal to the County to communicate with the City in the event of a development proposal.

Jones explained to the Commissioners that the County's General Plan policies provide for "deference" on land use within the sphere of influence. She further explained the County's policies also called for "referral" and that if a development is proposed within the sphere, the applicant will be directed to the City for annexation and development permits.

Commissioner Wilcox stated he understood the reasons for withdrawing these lands from the current Sphere of Influence if they are already developed and there is no foreseeable need for services in the future; in some ways it doesn't make sense for them to be in the City's Sphere of Influence.

Commissioner Glenn made the observation that quite a bit of undeveloped property lies within the area of interest; and asked Jones if there was a calculation of the acreage. After some discussion with the EO, Commissioner Glenn concluded that approximately one-third of the parcels recommended for removal from the sphere were undeveloped.

Commissioner Anderson asked the EO if LAFCo Law allows for the annexation of areas already developed. Jones answered that it does. Commissioner Anderson added that LAFCo Law allows for the consideration of relevant social and economic issues of a given community. Jones answered this is accurate, and it is within the Commission's purview to decide what is relevant socially and economically. Commissioner Anderson wondered if a factor like an area's zip code might be considered relevant.

Commissioner Phelps stated that the bottom line is that LAFCo would like to remove certain areas from the sphere and that the Sphere is in place so that Nevada City can have a dialog with the County whenever development is proposed. Phelps added it is not just development to be considered, but the "kind" of development. She reminded the audience that when a mini-storage project was proposed on Gracie Road (outside City boundaries), the City objected, and the facility was built anyway.

Commissioner Susman discussed the incorporation of the Town of Truckee, noting that the Commission had eight independent special districts to consider during the incorporation process. He congratulated Nevada City on keeping control over its water, sewer, and fire services. Commissioner Susman added that he has been on LAFCo for more than ten years and that he is currently seated on the Board of the California Association of LAFCos. He added there are 58 LAFCo's in California, and Nevada LAFCo's EO is held in high regard. Commissioner Susman explained it is the job of an Executive Officer to interpret LAFCo law, Commission policy and to provide resulting recommendations to the Commission. Commissioner Susman noted all cities anticipate future growth and that it is desirable to have safeguards in place so the development is managed. He added it makes sense for the residents to want to protect their watershed and their viewshed. He noted that ultimately, however, it is the County's General Plan that will determine land use outside of the city limits.

Chairman Weston reminded Commission members of their responsibility to remove their county and city and district hats; adding, that Commission members do not represent their individual agencies, but instead are required to exercise their independent judgement on behalf of the entire county. The Chair then asked for Nevada City's report.

Mark Prestwich, City Manager for Nevada City addressed the Commission. Mr. Prestwich stated that on January 25th, city staff expressed a number of concerns on this issue to the City Council. City staff received direction to develop a set of recommendations on the topic, which was brought back to the Council on February 8, 2017. Staff then prepared a comprehensive overview of how the recommendations are consistent with LAFCo policies and recommended the 1983/2008 sphere boundaries remain as is. The city council approved staff's recommendation at their February 22, 2017 meeting.

Mr. Prestwich stated City Planner Amy Wolfson, and City Engineer Brian McAlister were also in attendance to explain the City's capacity for providing services to any development proposed within the sphere.

Ms. Wolfson began with a description of the geographic areas in question as follows: Area One: east of Old Airport property. Area Two: between Hwy 20 and Boulder Street. She explained Area Two is important to the City; it is walkable and has access to Deer Creek and Little Deer Creek. Area Three: Gracie Road and Banner Mountain Trail, which she noted has been recommended by LAFCo staff to remain in the sphere. She noted that the City would like to extend the sphere in this area to include more of the creek drainage. She described Area Four as extending across the Banner Lava Cap Ridge and stated it has development potential, and is considered the City's southern viewshed. She described Area Five as a distinct boundary between Grass Valley and Nevada City. Describing Area 6, Ms. Wolfson explained this area contains Old Downieville Road and its trail system – which includes Eden Ranch. She noted that the Eden Ranch Subdivision is served by a package wastewater system and that failure of the system is imminent. *(LAFCo staff notes that the Eden Ranch system is operated and maintained by the County Sanitation District, and no operational issues have been noted by District staff.)* Ms. Wolfson noted that the city is currently developing a Master Plan for the Old Airport property which contains marginal soils due to old mining activity.

Ms. Wolfson spoke about land use considerations. She noted the region is in need of affordable housing opportunities and the city is committed to supporting these opportunities. She added

that these types of uses require higher density zoning and access to public sewer. She noted that the City has been in contact with various individuals interested in developing residential properties, specifically, the Gallili property and Hurst Ranch property, as well as the Providence Mine property which is already in the city.

Ms. Wolfson added that Nevada City is a job hub, giving examples such as the Courthouse, the Rood Center, the CALTRANS yard, and the headquarters of the Tahoe National Forest. She indicated that Nevada City currently provides services to all of these people and certain types of development within the current sphere will ensure continued safe access to all of these workplaces.

She noted the importance of the City's viewshed and City concerns about any kind of development that might compromise the viewshed. She remarked upon the City's entry points and noted concern that incompatible development could undermine the City's sense of place.

Mr. Bryan McAlister addressed the Commission. Mr. McAlister began his comments stating the City's General Plan was well thought-out and explained that it was developed in the 1980's at the same time as the original sphere of influence boundary, including a full EIR. He noted that the General Plan is the primary basis for City infrastructure planning, including roadways, sewer and other services.

Mr. McAlister added there are three substantial creeks in the area; and five environmentally sensitive ravines. He likened the sphere to a bowl containing groundwater, natural environment, riparian areas, and preservation and conservation areas and opined that annexations should not only be associated with development.

Mr. McAlister added that the City's trail system extends beyond the city limits. Referencing the city's proposal, Mr. McAlister indicated the soils surrounding the City have been stripped, and asserted that many annexations have been related to septic failure. He added that surface water sources (such as Deer Creek) need protection. Mr. McAlister added that the water treatment plant is in the sphere and it needs to be brought into the city limits (and the canal system as well).

Mr. McAlister added roads in-and-around Nevada City create a wagon wheel affect, and that they have been here since the Gold Rush days and eventually they all make their way into the downtown area of Nevada City. He added that in relationship to zoning consistencies, the city has substantially more opportunity for growth. Mr. McAlister stated all of the sphere is walkable to town and it can be split into smaller lots and developed in the future. He added, the city could use the tax revenue to augment critical services, such as fire and police protection.

Mr. McAlister added that in some cases, the City already serves residents who live in the sphere area. He stated that Grass Valley Fire and Nevada County Consolidated Fire personnel respond to calls for service south of Nevada City. Mr. McAlister also discussed recent tax increases approved by the residents; adding that Nevada City is a "full service city."

Mr. Bill Falconi, who served as City Engineer, and is now referred to as City Engineer Emeritus in recognition of his expertise and experience, addressed the Commission. He thanked city staff for all of their work on the Sphere Update. Mr. Falconi began by stating he has attended these types of these meetings for nearly 50 years. He stated it is rare for something this important to come before the Commission. Mr. Falconi stated the city has fire, police, water, and recreation services; and that City staff and council members have been making this work for more than a

century. The city has been on the National Historic Register since the 1960s. Mr. Falconi summarized all services provided by the city, including services where the county assists (for example, with park maintenance and building permits).

Mr. Falconi explained that regional public sewer systems are the trend throughout the state, and eventually residents within the city and the surrounding area will be served by this type of system. He pointed out there are two areas outside the City that had chronic sewer issues due to the marginal soils: the area to the north of town, annexed in order to serve the Northridge restaurant, and the Robinson timber property to the south on Nevada City Highway.

Mr. Falconi said that when the City's street system was in need of repair, the residents voted for a tax measure to re-surface, refurbish and ensure continued maintenance. He summarized by saying he could make several more arguments for enlarging the sphere, but at this juncture would recommend leaving the current sphere in place.

Commissioner Anderson asked Ms. Wolfson if the general plan boundary was defined before 2008. Ms. Wolfson responded that this particular boundary has been in place since 1986.

Commissioner Beckenbach stated he heard a lot of good arguments, and then pointed out that the city has not actively pursued any large annexations, which could have provided the best argument of all for expanding the sphere. He added that adding properties into the city boundary is the most obvious way to add to the tax base.

Mr. Falconi stated it is the policy of Nevada City Council to not be aggressive about annexations.

Commissioner Beckenbach responded that areas intended for possible annexation are the areas the Commission would logically include in the sphere update.

Mr. Prestwich stated he would propose the Commission consider the possibility of annexing developable properties prior to the preparation of development plans. He added that the Council met the previous evening and voted to initiate annexation of City-owned Sugar Loaf mountain, which would be used for an open space/park area.

Commissioner Wilcox asked what percentage of Little Deer Creek Watershed is within the current sphere. Mr. Falconi estimated one-third of the watershed will be affected by the change. Commissioner Wilcox then asked what percentage of the Little Deer Creek Watershed is proposed for withdrawal from the sphere, and directing his question to the Nevada City Manager, he asked Mr. Prestwich if he thought the new sphere proposal means the city would lose control over the health of the watershed. Mr. Prestwich stated that a substantial amount of the watershed could suffer from septic failure. He added that the city would definitely lose control of development within the areas not included in the sphere. Commissioner Wilcox pointed out that the point of diversion is not within the sphere currently, which would be necessary for source protection.

Paul Matson, a former Mayor and City Council member who has also served as a LAFCo Commissioner, stated he was concerned about the time allotted to speak on the matter. He said he was on the Commission when Truckee proposed to incorporate, and multiple public hearings were held with regard to that process.

Mr. Matson stated that Nevada City is different from most cities in that they are interested in annexing open space. He commented on the term “Area of Interest” and wondered if it included things such as quality of life, economic climate, and workforce housing.

Laurie Oberholzer addressed the Commission representing the Willow Valley Group, the Greater Champion Group, the Banner Mountain, and the Federation of the Neighborhoods. She stated that all of these organizations oppose the reduction of the sphere. Ms. Oberholzer stated that it would be better for the city and the county to work together on future development proposals.

Ms. Oberholzer explained that watershed protection is important to the people she represents. She added that she did not think the term “Area of Interest” has any teeth, and that the people are not able to count on the county to do the right thing. Ms. Oberholzer asked the Commission to direct staff to leave the sphere as is, and to continue working with the Nevada City staff on a workable solution.

Mike Byrne of the Nevada City Chamber of Commerce introduced himself and his colleague, Cathy Whittlesey. He stated they were attending the hearing representing the Chamber’s Board of Directors and the general membership. Mr. Byrne then read the Chamber’s letter which had been added to the official record several days earlier (Clerk’s note: the letter is dated February 21, 2017 and signed by the Chamber President).

Abigail Givens addressed the Commission. Ms. Givens stated she lives in the territory between the Sportsman’s Club and the source of Nevada City water, Little Deer Creek; slightly on the other side of the sphere boundary. Mrs. Givens is opposed to expanding the sphere because these properties have intense marijuana farming activity and the water quality at the source is being negatively impacted. She further explained there is a small portion of Little Deer Creek crossing a corner of her property and she is always careful not to add any dangerous fertilizers to that area. Mrs. Givens stated all of her neighbors are also careful and care a great deal about the water quality of the creek.

Lorraine Webb addressed the Commission: Ms. Webb stated she owns property within the sphere, and is concerned about Nevada City’s watershed and other issues. She stated she will make an effort to learn more about having her property annexed into the City, and thought the workshop is likely to raise awareness for many residents on this option. Ms. Webb also suggested the sphere be increased, rather than reduced. She also pointed out that regardless of whether it’s true, the public perception is that the proposal is a “land grab” on the part of the County or perhaps by NID. Ms. Webb stated that she has heard all kinds of rumors including some discussions of litigation since having property removed from the sphere could result in the devaluation of the parcels being removed. She added that while she is not, generally speaking, a litigious person she understands the importance of perception and is reporting the gossip currently circulating throughout the city. Mr. Webb stated she is appreciative of the Commission’s efforts toward transparency.

Doug Holmen of the Federation of Neighborhoods (FONA), addressed the Commission. Mr. Holmen stated the membership of FONA met on February 7th, and voted unanimously that the sphere not be reduced from its current size.

Chuck Durrett addressed the Commission. Mr. Durrett stated he understands the need to occasionally review the Nevada City Sphere of Influence. He emphasized the importance of

planning toward environments and neighborhoods that are comfortable for adults and children. Mr. Durrett explained that one of the sphere goals is to avoid urban sprawl, which is one of LAFCo's main missions.

Charly Price of 620 Pine Street, Nevada City, addressed the Commission. Mr. Price briefly discussed evolving attitudes involving trail systems. He commented that there is potential for the current trail system to connect to the system further north, in the Tahoe National Forest.

Gus Del Valle 270 Boulder Street, Nevada City, addressed the Commission. Mr. Del Valle explained that the he is often unable to get out of his driveway onto Boulder Street because of traffic. He added that recently, when Interstate 80 was closed just before the Hwy 20 exit causing major traffic issues in Nevada City. Mr. Del Valle is concerned that future uncoordinated development could cause major traffic problems in the City, which is why the sphere should remain within the City's control.

Damon DeCrow, 11680 Hidden Hollow, Grass Valley addressed the Commission. Mr. DeCrow expressed his concern about the appearance of a crisis situation when in fact if Nevada City had wanted to add properties, there should have been more preparation long ago. He stated that to rely on applicants to approach the City for initiating annexations is not proactive, nor does it add to any kind of future planning efforts. Mr. DeCrow added there were meetings in the past where the City's Fire Department and Nevada County Consolidated Fire discussed cost-sharing, but not enough effort has been put into addressing future wildland fire protection needs.

James Morris, 10732 Willow Valley Road, Nevada City. Mr. Morris has lived in this area since 1993. He stated his support of previous comments, specifically those of Mr. Falconi, Mr. Mattson, and Mr. Prestwich.

Chairman Weston asked the other Commissioners if they would favor continuing the workshop comments to another day. It was agreed to continue the item to **Thursday, March 16, 2017**.

CALAFCO Matters

Commissioner Susman gave a brief report on CALAFCO matters.

Announcements

Scott Browne announced his upcoming Third District Appellate Court hearing regarding a zoning issue in Nevada City. The Court will be hearing arguments on Thursday March 2 at the Nevada Union High School.

EXECUTIVE OFFICER'S REPORT

Chairman Weston asked if there were any additions to the EO's written report. Jones responded there were no additions to the written report.

Adjournment

Chairman Weston adjourned the meeting at approximately 12:15.

Nevada Local Agency Formation Commission

950 Maidu Avenue

Nevada City, CA 95959

Phone 530 265-7180 or 888-846-7180 ... Fax 530 265-9862

Date: February 23, 2017

To: LAFCo Commissioners

From: SR Jones, Executive Officer
Scott Browne, LAFCo Counsel

Subject: Continued Workshop on Sphere of Influence Update for Nevada City

Summary

The Commission's February 23rd meeting included a public workshop on the update of the sphere of influence plan for Nevada City. As the Commission is aware, the City of Nevada City has objections to the sphere boundary recommended by LAFCo staff and has prepared an alternative proposal, which was also presented to the Commission at the workshop.

The purpose of the workshop was to provide opportunity for discussion of both options and to provide direction to LAFCo staff for completion of the sphere plan update and preparation of the environmental review.

There was much public interest in the topic, and due to the press of time, the Commission decided to continue the workshop item to allow additional opportunity for public comment.

Background

LAFCo law defines a sphere of influence as *a plan for the probable physical boundary and service area of an agency, as determined by the Commission* (Government Code Section 56076). LAFCo is required to adopt a sphere of influence for each city and district in its jurisdiction, and to review each sphere plan and update as necessary every five years. LAFCo law prescribes the process and factors of consideration for developing and updating sphere of influence plans; Government Code Section 56425 requires the Commission to make written determinations on five factors:

1. Present and planned land use within the territory
2. Present and probable need for services within the territory
3. Present capacity of the agency's facilities and adequacy of the services it provides
4. Existence of any relevant communities of economic or social interest
5. For agencies that provide water, sewer or fire protection, the present and probable need for those services within any Disadvantaged Unincorporated Communities within the sphere.

In addition, all LAFCOs are required to adopt policies specifying how they interpret and apply the Local Government Reorganization Act's provisions. Section 56425(a) of the Act specifically requires LAFCo to adopt local policies to guide development of spheres and Section 56425(d) mandates that the Commission adopt spheres in a manner consistent with those policies. Relative to spheres of influence, Commission policies Section II A provide for:

- **Consistency Requirement**: Sphere plans must be consistent with Commission policy, the Legislature's policy direction, the sphere plans of other agencies in the area, the Commission's determinations on municipal services, and with the long-range planning goals for the area.

- **Sphere Boundaries:** When establishing the boundaries of a sphere of influence for an agency, LAFCo will consider the factors listed in Section 56425(e) of the Government Code as noted above.
 - With respect to Factor 2), above, LAFCo will not include lands that are unlikely to require the services provided by the agency—for example, lands not designated for development by the applicable General Plan, territory where development is constrained by topographical factors, or areas where the projected and historical growth rates do not indicate a need for service within the timeframe of the sphere plan.
 - With respect to Factor 3), above, LAFCo will not include areas in an agency’s sphere of influence which cannot feasibly be served by the agency within a timeframe consistent with the sphere plan.

Relative the standards for inclusion of territory within the sphere, Section II B (Contents of the Sphere of Influence Plan) state that the Commission must be able to make a positive determination that the City’s sphere to be consistent with historic growth rates, and that lands included in the sphere are likely to be annexed within the 20-year timeframe:

- **Specific Requirements for City Sphere Plans.**
 - b) **Parcel Inventory and Absorption Study.** The Commission must be able to make a positive determination that the city’s sphere is consistent with its historical and expected growth rates, and that the territory within the sphere is likely to be annexed within the 20-year timeframe. The Commission’s determination will be based on information provided by the city, including 1) a vacant land inventory, 2) an analysis of the vacant lands to determine their suitability for development, and 3) a market study to determine the absorption rate of the usable vacant lands. If the city is unable to supply such information, LAFCo will make a sphere determination after considering the city’s historical growth rates for each land use designation, pertinent city land use and zoning regulations, and the physical characteristics of the property intended to be included in the sphere.

Process

At today’s continued workshop, the Commission will continue to take public comment. It will then proceed to a discussion of the alternative actions available and make a decision which provides direction to LAFCo staff as to how to proceed with preparation of the update of the Nevada City Sphere of Influence plan.

Alternative Actions Available to the Commission

Commission direction to staff for completion of the sphere plan update may take a number of forms, including the following alternatives:

1. Direct LAFCo staff to proceed with the development of the staff-recommended sphere boundary.
2. Direct LAFCo staff to proceed with the development of the city-recommended sphere boundary.
3. Direct LAFCo staff to proceed with the development of a modified sphere boundary, as determined by the Commission.
4. Defer the decision as to preferred sphere boundary and direct LAFCo staff to work with City and County officials to facilitate a meeting to discuss the City’s concerns and possibly reach an agreement that addresses those concerns.

5. Defer the decision as to the preferred sphere boundary and direct LAFCo staff to contract with a qualified consultant to prepare an initial study that will assess the potential for adverse environmental impacts that might result from adoption of either alternative sphere of influence boundary.

Discussion of Alternatives

Alternative 1: Proceed with Staff Recommended Sphere

This alternative was discussed extensively in the original staff report and the justifications for it. It is primarily driven by application of LAFCo's adopted sphere policies to the City's circumstances.

Alternative 2: Proceed with City Recommended Sphere

This alternative has been proposed by the City. The City has provided extensive discussion of its reasons for retention of its existing sphere which has been provided to the Commission. However the discussion does not specifically address LAFCo's adopted sphere policies and how the proposal would be consistent with those policies. Consequently if the Commission desires to proceed with this alternative, it will need to provide guidance to staff on how this alternative can be justified under LAFCo's policies.

Alternative 3: Proceed with Modified Staff Recommended Sphere

The Commission could develop a modification of the Staff recommended sphere boundary to include additional territory address some of the parcel specific concerns that have been raised. Possible additions could include approximately 30 parcels located adjacent to Nevada City Highway. The City indicates it provides sewer service to parcels on the east side of the highway and presumably connection of parcels on the opposite side would prove to be feasible, given the proximity of city sewer. In addition, the City's water treatment plant and the nearby Sportsmen's Club would be logical candidates for inclusion. The City has provided water service to the Sportsmen's Club under out-of-agency contract for many years. The Water Treatment Plant is located on two parcels leased by the City from the Federal Bureau of Land Management. The inclusion of the Nevada City Highway parcels could be justified under policy in recognition of the area's potential need for service, the City's capacity and relative feasibility of extending City services to the area. The inclusion of the Sportsmen's Club and the Water Treatment Plant parcels could similarly be justified in recognition of potential service needs in that (1) the City is already providing service to the Sportsmen's Club, (2) the Water Treatment Plant is an important City facility and should the City annex the property, the City would extend its land use regulatory function to the property. Annexation would place the City in a better position to manage the potential for adverse environmental impacts to the property.

Alternative 4: Defer decision and Direct Staff to Work with City and County on Sphere Agreement

LAFCo law requires a meeting between City and County officials whenever the City proposes that LAFCo amend its sphere of influence. The purpose of this type of meeting is to "explore methods to reach agreement on development standards, planning and zoning requirements ..." Such a meeting could result in an agreement between the two agencies to ensure the City's concerns regarding incompatible land uses in the area surrounding the City are properly addressed in a manner that may not require inclusion of all of the area in the City sphere. This could meet some of the City's major concerns while allowing LAFCo to adopt a smaller sphere more consistent with Commission policy and realistic growth expectations for the City. If the Commission wishes to encourage the City and County to explore that possibility, it may direct LAFCo staff to facilitate such a meeting.

Alternative 5: Defer decision and Direct Staff to Prepare an Initial CEQA Study looking at both the Staff and City SOI Alternatives

Sphere of influence updates are subject to environmental review because they can represent the first step toward urban development of undeveloped land on the City's periphery. One of the primary purposes of this workshop is to provide direction to staff as to what boundaries for the City of Nevada City should be analyzed in the environmental review.

The first stage of the environmental review generally entails preparation of an initial study to assess the potential for adverse environmental impacts. If the Commission would like more information before making a decision on the preferred boundary alternative, the initial study process could be used to compare potential for adverse impacts from the two boundary alternatives. This would provide the Commission with additional data on environmental impacts to consider when completing the sphere update.

This approach has been used previously, most recently with the updates of the sphere plans for the Truckee Sanitary District and the Truckee Donner Public Utility District. In these cases, each district was invited to provide a sphere boundary recommendation (as has Nevada City); these proposed boundary alternatives were then analyzed in the environmental documents for each sphere update.

A draft letter received from the Nevada City Attorney (included with the materials for this item) amplifies the need for an environmental review for the sphere of influence update.

NOTE: Alternatives 4 and 5 are not mutually exclusive and the Commission may want to consider proceeding with both at that same time.

cc: Mark Prestwich, City Manager (via e-mail)
Amy Wolfson, City Planner (via e-mail)

March 6, 2017

Nevada Local Agency Formation Commission
950 Maidu Avenue
Nevada City, CA 95959
Attn: SR Jones, Executive Officer

Re: LAFCo staff proposal to reduce sphere of Influence of Nevada City

Dear LAFCo members:

After seeing the packed house at your February 23rd workshop, I read through some 70 letters and emails subsequently received by the City commenting on the sphere reduction proposal before you. All but one of them were strongly opposed to any reduction of Nevada City's sphere of influence and some urged expansion – remarkable consensus I have never before seen on any government issue! However, I am not writing this letter to you as attorney for Nevada City to weigh in on any decision within the discretion of LAFCo. Rather, I want to bring to your attention a legal matter that has yet to be addressed. I previously brought this point to the attention of your attorney, inviting him to discuss it with me, but he has not yet taken me up on my offer – hence my letter directly to you.

Many of the public comments I read expressed dismay that LAFCo is being asked to reduce the City's sphere at all. They observed that the current sphere is working well and were concerned about what effect the proposed change would have on them, their property and the City, especially in the absence of a compelling reason to make a change. They are entitled to that information and so are you. If there is a fair argument that the proposed sphere reduction may have a significant and adverse impact, LAFCo needs to look at and disclose those impacts and how they can be avoided or mitigated before taking action. The legal matter not yet mentioned anywhere is:

Applicable existing case law indicates that the proposal before LAFCo to reduce Nevada City's sphere from 2,907 to 1,482 acres, effectively taking away the city's option to exercise control over approval of future development in the areas removed from its sphere meets the definition of a "project" requiring an EIR.

The case of *City of Livermore v. Local Agency Formation Commission* (1986) 184 Cal.App.3d 531 held that a LAFCO was required to prepare an EIR prior to revising existing "sphere of influence guidelines" governing potential development in municipalities' spheres of influence where the new guidelines would have deleted the statement "[e]xisting and future urban development areas belong in cities." In support of the decision, the court cited evidence in the record of potential environmental and related economic impacts of the proposed action, including greater consumption of land to accommodate the same level of population and economic activity; deterioration of existing cities; promotion of growth in unincorporated areas; inability of existing cities to meet their bond obligations; increased net travel resulting in greater energy consumption and pollution; loss of open space; and conversion of agricultural land.

The court added:

"LAFCO deletion of the guideline mandate that urban development belongs in cities opens the door to 'leap frog' pockets of development, which in turn makes the rendering of city services expensive and inefficient. This change also places in jeopardy open space and agricultural lands surrounding existing urbanized areas. The potential impact of the guideline revisions is great; we see an advantage in assessing this impact early and in a cumulative way, instead of waiting and assessing the impact project by project."

I am referring to this case and quoted from it at length to you and your attorney because I was struck by the remarkable similarity of facts between the current proposal before the Nevada County LAFCo and the LAFCO proposal successfully challenged by the City of Livermore.

I realize that you are only being asked by your Executive Officer to provide direction as to the appropriate boundary you want her to use in preparation of the environmental analysis for the sphere update, so she is not ruling out the need to prepare a full EIR if you direct her to study her proposed sphere reduction. The information generated in an EIR is the very information that would be helpful to you in addressing the common concerns resonating in the public comments and may ultimately lead to a decision not to reduce the sphere. Legally you may need an EIR studying the impact of a sphere reduction and how to avoid or mitigate them only just before you ultimately make the decision on whether or not to

A clear reading would be that LAFCo is required to review and update spheres every five years **if it determines that doing so is necessary**. It could just as easily determine that, due to the recession starting in about 2008, development was abnormally low so that it is not necessary to update the City's sphere at this time.

3. The Executive Officer stated as a further reason for the recommended change in the City's sphere the LAFCo law requirement adopted in 2000 to prepare Municipal Service Reviews. Again, this requirement was in effect before both the 2002 and 2008 LAFCo review and affirmation of the existing sphere boundaries. If anything, the current Municipal Service Review should and does reflect an enhanced ability to provide services and no inability to serve the entire existing sphere area if and when annexed. Nothing compelling here.
4. The Executive Officer states that the local LAFCo's policies provide for "...the designation of 'Areas of Interest,' which are **areas beyond an agency's sphere of influence** where land use and other decisions may impact the agency." (emphasis added). There is nothing in the LAFCo law at Government Code §§ 56000 et seq., authorizing this extra category and, even if there were, the language suggests that Areas of Interest may be designated beyond the City's sphere, not used as a reason to reduce its sphere.
5. The Executive Officer states that the City and County General Plans provide for coordinating land use designations for parcels within the City's sphere and following the 2008 LAFCo update of the City's sphere they successfully did so on all but 5 parcels, none of which are recommended by her for exclusion from the sphere. Sounds like it's working.
6. As point number 6, the Executive Officer states that the cost of providing municipal services, especially fire and police, have increased dramatically since 1983. This observation applies to all agencies, except maybe the County which does not even provide any fire, water, or sewer services and provides few recreation and trail services. So this does not seem to be a compelling reason for reducing the City's sphere to give the County ultimate control over development in areas removed when the City, rather than the County, will be faced with addressing most of the adverse impacts.
7. Finally, the Executive Office states that many of the parcels in the City's current sphere – the one reapproved in 2008 – are now developed for residential use on septic and wells and do not require City services. Looking at the following page of the recommendations it appears that the recommendation proposes to exclude from the City's sphere at least 878 acres of property that are unimproved without even looking at other reasons for annexation, like maintaining logical City boundaries, failed septic systems, protecting open space, connecting trails, etc. At best maybe only one of the seven points raised by the Executive Officer could possibly bear review.

reduce the sphere as part of the update. However, delaying a study of the effect asks you to currently make a decision without the information you need to make a good one. From a practical point of view, unless there is a compelling reason for reduction of the City's sphere, it makes more sense to for you to ask information as to the effects of a sphere reduction before you consider giving directions to study a reduced sphere that would be the first step in a chain of events to follow that would require an exhaustive environmental document costing LAFCo considerable time, effort and money.

As an alternative, if you don't get compelling reasons for considering a reduced sphere for Nevada City and better information on the impacts of making a change, you may want to take a closer look at the last Update reaffirming the existing sphere and ask yourself what has changed in the intervening 8-9 years that would suggest the need for the radical change proposed. As pointed out by your Executive Officer, the overall goal of California LAFCos is to encourage orderly growth and development and to discourage urban sprawl. It can certainly be questioned how reduction of a city's sphere, reducing the city's control over development in the areas remove to mere comment rather than the option of annexing and conducting the approval process of development that will affect their sewer, water, roads, recreation, police and fire services, would advance that goal, again, absent some compelling reason for a change. I don't see one and neither do the members of the public whose comments which in addition to the question "What would be the effect on Nevada City, its residents and residents of its sphere of a reduction of that sphere?" are asking "Why is LAFCo considering taking this action now?" and "Why are they even considering this action at all?"

To both questions, there is no compelling answer or reason given in the Executive Officer's report, as I will attempt to point out briefly:

1. The Executive Officer stated that the LAFCo law has changed the boundary definition for spheres of influence from the "ultimate" boundary to the "probable" boundary. While this change was after the sphere was originally adopted in 1983, it was made long before LAFCo's reaffirmation of those sphere boundaries in extensive updates in 2002 and 2008 with input from your Executive Officer. This is not a recent change compelling a new reduced sphere.
2. The Executive Officer stated as another reason that LAFCo is now required to periodically review and update spheres every five years. What Government Code §56425(g) on LAFCo determination of spheres of influence actually states is:
"On or before January 1, 2008, and every five years thereafter, the commission shall, **as necessary**, review and update each sphere of influence." (emphasis added)

The main point of this letter is to make the LAFCo members aware that the decision on boundaries of the Nevada City sphere that they want the Executive Officer to consider for environmental review could cause substantial expense to be incurred by LAFCo for no compelling reason. Responsible decision making dictates consideration of this legal consideration.

Sincerely,

Hal DeGraw
City Attorney for Nevada City

cc: P.Scott Browne, Esq. LAFCo counsel
Nevada City City Council
Amy Wolfson, City Planner
Mark Prestwich, City Manager