



Solano Local Agency Formation Commission

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October 8, 2013

Mr. Matt Walsh
Solano County Department of Resource Management
Planning Services Division
675 Texas St. Suite 5500
Fairfield, CA 94533

RE: Recirculated Draft Environmental Impact Report for the Proposed Middle Green Valley Specific Plan Project

Dear Mr. Walsh:

Thank you for providing Solano LAFCO with the opportunity to comment on the recirculated DEIR for the Middle Green Valley Specific Plan Project. As you know LAFCO is termed the “watchdog of the legislature” for effective and efficient provision of municipal services. Our charge includes discouraging urban sprawl and the preservation of prime agricultural land and open space. We would also be the agency that forms the county service area (CSA) that would be providing water and other municipal services to the Middle Green Valley Specific Plan area. We are a responsible agency under CEQA for the development that is planned under the Specific Plan and will be relying on the DEIR in making our decision. As such, it is important that the DEIR accurately address and evaluate issues that LAFCO will face.

As the recirculated section relates only to the provision of water services our comments will be limited to that section. Since our next Commission hearing is October 21, which is after the close of the comment period, our comments have not been reviewed by the commission and represent staff’s analysis of the DEIR. Upon review by the commission there may be some changes that will be transmitted to you.

LAFCO is required to consider a number of factors in approving any change of organization under Section 56668 including “(k) Timely availability of water supplies adequate for projected needs as specified in Section 65352.5.” Therefore an adequate analysis of the availability of water to serve the specific plan area is necessary for LAFCO’s decision making.

The document analyzes impacts for two options for provision of water to the plan area. Option A identifies the City of Fairfield as the provider of potable water to the project. Option B assumes that water will be provided by groundwater wells installed and operated by the CSA.

Typically the EIR section includes a section on the policy and regulatory framework. That section would identify relevant policies or legislation that would apply to the project and the impacts that are being considered. While several laws and regulations are cited in the DEIR section, one potentially important section is omitted, namely Government Code Section 56133.

Section 56133 is a provision of the Cortese Knox Hertzberg Act adopted in 2000 which requires LAFCO approval for agencies to provide services outside their agency boundaries. A copy of the statute is attached.

Since the project is outside Fairfield's jurisdictional boundaries, municipal service outlined in Option A may be subject to the requirements of this section.

Section 56133 authorizes LAFCO to approve agreements for extension of services by agencies to lands that are within the agency's sphere of influence "in anticipation of a later change of organization". Extension of services outside of an agency's sphere is only allowed to respond to a documented "existing or impending threat to the public health or safety of the residents of the affected territory". The Project Plan area lies outside the City of Fairfield's sphere of influence and there is no documented existing or impending threat to health and safety. Consequently, the proposal to have the City of Fairfield provide treated water to the Plan area under option A may not comply with current law and LAFCO may not have legal authority to approve the extension of services.

LAFCO staff would need the precise terms of the proposed agreement between the City of Fairfield and the CSA in order to make a final determination whether it is an agreement subject to LAFCO approval under 56133. However, the DEIR should consider as a significant risk, the possibility that such extension of services may not be legally permissible.

We have reviewed the Option B analysis of groundwater that shows sufficient water supply for the project with the three wells and two storage tanks. We understand that the analysis of the Water Supply Assessment (WSA) looks at average annual supply and demand for normal, dry, and multiple dry years. As part of LAFCO's analysis to determine a sufficient water supply we would also look at reliability, average peak daily demand, and peak one hour demand. By reliability we are concerned about the scenario that if one of the three pumps failed whether the other two pumps and storage facilities produce enough water to satisfy average daily demand. Including that information as well as the peak demand information in the DEIR would be useful for our analysis of the formation of the CSA. In consideration of those issues we appreciate that the WSA identifies "at least three deep wells" as the groundwater source, which implies there may be additional wells drilled if required.

Our other comments have to do with cumulative impacts. The document states "no other reasonably foreseeable projects are located in the project area that would rely on groundwater for domestic use." That statement is misleading in that it neglects to consider the Woodcreek 66 project which is approximately one mile east of the Middle Green Valley project. The water source for that project is yet to be determined, but groundwater is certainly an option.

We hope you will consider these comments when evaluating the recirculated DEIR.

Sincerely,



Elliot Mulberg
Interim Executive Officer

ATTACHMENT GOVERNMENT CODE SECTION 56133

56133. (a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundaries only if it first requests and receives written approval from the commission in the affected county.

(b) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries but within its sphere of influence in anticipation of a later change of organization.

(c) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries and outside its sphere of influence to respond to an existing or impending threat to the public health or safety of the residents of the affected territory if both of the following requirements are met: (1) The entity applying for the contract approval has provided the commission with documentation of a threat to the health and safety of the public or the affected residents.

(2) The commission has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, or sewer system corporation as defined in Section 230.6 of the Public Utilities Code, that has filed a map and a statement of its service capabilities with the commission.

(d) The executive officer, within 30 days of receipt of a request for approval by a city or district of a contract to extend services outside its jurisdictional boundary, shall determine whether the request is complete and acceptable for filing or whether the request is incomplete. If a request is determined not to be complete, the executive officer shall immediately transmit that determination to the requester, specifying those parts of the request that are incomplete and the manner in which they can be made complete. When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete, unless the commission has delegated approval of those requests to the executive officer. The commission or executive officer shall approve, disapprove, or approve with conditions the contract for extended services. If the contract is disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.

(e) This section does not apply to contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider. This section does not apply to contracts for the transfer of nonpotable or nontreated water. This section does not apply to contracts or agreements solely involving the provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries. However, prior to extending surplus water service to any project that will support or induce development, the city or district shall first request and receive written approval from the commission in the affected county. This section does not apply to an extended service that a city or district was providing on or before January 1, 2001. This section does not apply to a local publicly owned electric utility, as defined by Section 9604 of the Public Utilities Code, providing electric services that do not involve the acquisition, construction, or installation of electric distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundaries.

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