

MEMORANDUM

TO: Local Agency Formation Commission

FROM: Stephen Lucas, Executive Officer
Stephen Betts, Deputy Executive Officer

SUBJECT: 11-03 MS – Review and Consideration of the Draft Sphere of Influence Plan/
Municipal Service Review Update for the Lake Oroville Area Public Utility
District

DATE: May 29, 2013, for the meeting of June 6, 2013

LAFCo Commissioners: Please bring your copy of the Draft Sphere of Influence Plan/MSR Update and the Draft Environmental Impact Report for the Lake Oroville Area Public Utility District Sphere of Influence Update to the June 6 meeting.

Summary / Background

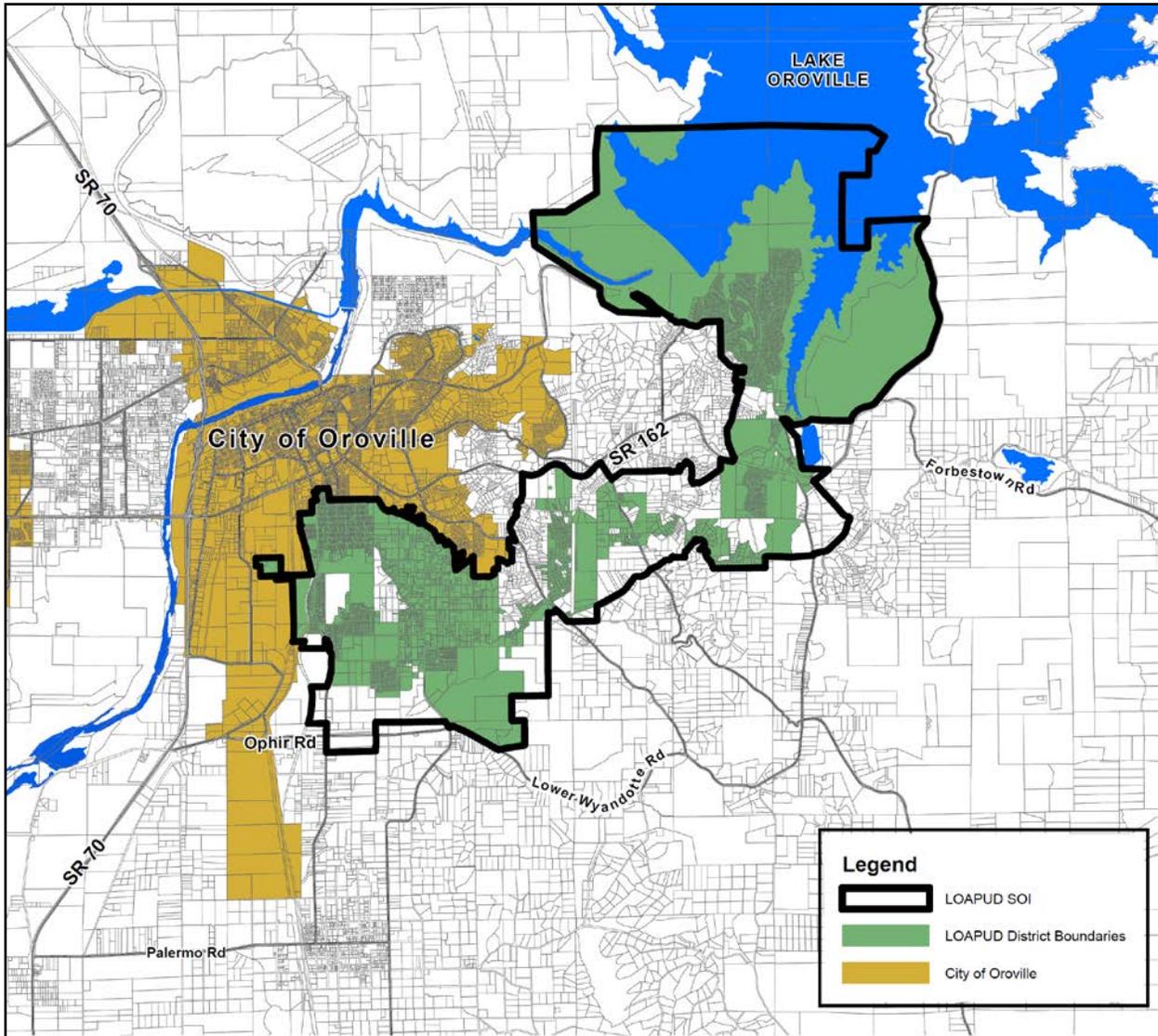
The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 requires LAFCo to review and update, as necessary, local agency Spheres of Influence (SOIs) (§56425(g)). In addition, LAFCo is required to conduct a Municipal Service Review (MSR) for each agency prior to, or in conjunction with, an agency's SOI update (§56430(a)).

The Lake Oroville Area Public Utility District (LOAPUD/District) is proposing to add 1,826 parcels totaling approximately 9,700 acres to the District's Sphere of Influence (SOI) in order to facilitate the future annexation and future use of the parcels consistent with the Land Use Element of the Butte County General Plan. To support the SOI update, LOAPUD's existing Municipal Service Review (MSR), which was approved by the Commission in 2009, is also being updated.

The Draft SOI Plan/MSR Update, which was previously circulated to the Commission and which can be found on Butte LAFCo's webpage at <http://buttelafco.org>, was circulated for a 21-day noticed public review period that began on May 15, 2013, and ends on June 4, 2013. As of the date of this report, no comments on the Draft SOI Plan/MSR Update have been received. A Draft Environmental Impact Report (DEIR) that analyzes the potential environmental impacts of the LOAPUD SOI Update has also been prepared and is currently within a 45-day public review period, which ends on June 24, 2013. The DEIR was previously circulated to the Commission and can be found on Butte LAFCo's webpage. No comments have been received on the DEIR as of the date of this report.

At the June 6 meeting, the EIR consultant – Steve McMurtry of De Novo Planning Group – will give a presentation on the Draft Environmental Impact Report to the Commission. LAFCo staff will then give a presentation on the SOI Plan/MSR Update.

At the June 6 meeting, the Commission will review the SOI Plan/MSR Update and the Draft Environmental Impact Report, receive public comments on these documents, direct staff and the EIR consultant to make any necessary changes, and continue the hearing open until the Commission's July 10, 2013 meeting. The Commission cannot take any formal action on these documents at the June 6 meeting, with final action and adoption on these documents anticipated to occur at the July 10, 2013 Commission Meeting.



Existing LOAPUD Sphere of Influence and Jurisdictional Boundaries

Municipal Service Review Update

The Cortese-Knox-Herzberg Act requires that a Municipal Service Review (MSR) be conducted prior to, or in conjunction with, the update of an entity's Sphere of Influence (SOI). A MSR is a comprehensive analysis of service provision by each of the special districts and cities within the legislative authority of the LAFCo. It essentially evaluates the capability of an agency to deliver the services it is empowered to provide.

The *Domestic Water and Wastewater Service Providers Municipal Service Review*, adopted by the Commission on June 1, 2006, contained an evaluation of the Lake Oroville Area Public Utility District. A subsequent service review of LOAPUD was completed in conjunction with the preparation of the *Wastewater Service Providers-Oroville Region Municipal Service Review*, adopted by the Commission on November 5, 2009. Section 5.0 of that MSR examined the services provided by the District and the information in the MSR provides baseline information for

the SOI Plan. However, some of the information in the 2009 MSR is dated. Thus, additional information from the District has been collected and various other land planning documents have been reviewed, including land use zoning maps and the Butte County General Plan 2030, in order to provide the most current and accurate information available. As a part of the proposed LOAPUD SOI Update, the Lake Oroville Area Public Utility District section of the *Wastewater Service Providers-Oroville Region Municipal Service Review* has been updated and is attached to the Draft SOI Plan, which was previously circulated to the Commission and can be found on Butte LAFCo's webpage at <http://buttelafco.org>. Attachment 1 on Page 16 of this report contains the proposed revised MSR determinations.

Sphere of Influence Plan and Update

Sphere of Influence Policies

The Cortese-Knox-Hertzberg Act (CKH Act) empowers LAFCo with the responsibility for developing and determining the SOI of each local agency within the county, and for enacting policies designed to promote the logical and orderly development of areas within the spheres.

An SOI is defined as a plan for the probable physical boundaries and service area of a local agency, as determined by LAFCo. The intent of an SOI is to identify the most appropriate areas for an agency's extension of services in the foreseeable future (i.e., 10-20 year horizon). Accordingly, territory included in an agency's sphere is an indication that the probable need for service has been established, and that the subject agency has been determined by LAFCo to be the most logical service provider for the area.

The CKH Act requires that LAFCo decisions regarding boundary changes be consistent with SOIs of local agencies. LAFCo is prohibited from approving annexations that are not within the annexing agency's SOI. Once an SOI is established, annexations must still be individually considered and evaluated on their own merit.

State law requires LAFCo to review and update, as necessary, the SOI of each local agency not less than every five years. Sphere of Influence updates may involve an affirmation of the existing SOI boundaries or recommend modifications to the SOI boundaries. LAFCo is not required to initiate changes to an SOI based on findings and recommendations of the service review, although it does have the power to do so.

Existing Conditions

The existing Sphere of Influence Plan for LOAPUD (*Attachment A* in the Draft SOI Plan) was adopted in April 1985 as a part of the Oroville-Thermalito Area Sphere of Influence Study. The existing SOI Plan is significantly out of date and over the years a number of amendments have been made to LOAPUD's SOI boundary to accommodate individual projects without a comprehensive SOI update. The most significant SOI amendment for LOAPUD was in 2006, which added 23 publicly owned (State Parks) parcels totaling approximately 4,403 acres to LOAPUD's SOI and jurisdictional boundaries, most of which is covered by Lake Oroville. The last SOI amendment to LOAPUD - the Ophir Road SOI Amendment - was approved in 2012 and which added approximately 93 acres to LOAPUD's SOI. The purpose of that SOI amendment was to facilitate a future annexation to LOAPUD of a large residential/commercial mixed-use project approved by Butte County.

LOAPUD's existing Sphere of Influence is currently approximately 10,500 acres (16.4 square miles) in size, and consists of approximately 5,645 parcels. Most of LOAPUD's SOI is located within the unincorporated area of Butte County, but approximately 133 acres (140 parcels) are within the jurisdictional boundaries of the City of Oroville. Approximately 4,664 acres (44%) of the District's current SOI consists of the Lake Oroville State Recreation Area. The population within the District's SOI is approximately 12,000.

As shown in Table 3-3 of the Draft SOI Plan, the predominant land use within the District's SOI is residential, with 2,742 (73%) of the 3,737 parcels in LOAPUD's SOI developed with a residential use. Other uses within the existing LOAPUD SOI include commercial, public, and industrial uses, along with a few agricultural uses. Agricultural uses within the District's SOI consists of nine parcels totaling approximately 259 acres in size. The agricultural uses include seasonal livestock grazing, olives, vines, citrus, and nuts. However, none of the parcels with existing agricultural uses are designated by the Butte County General Plan as Agricultural.

Five parcels within LOAPUD's current SOI are subject to a California Land Conservation Act Agreement ("Williamson Act"). Four of these parcels are designated and zoned for residential uses on 5-acre parcels, with the fifth parcel designated and zoned for very low density residential uses on 1-acre parcels. One of the five Williamson Act parcels is within LOAPUD's service boundaries. Staff considered removing the four Williamson Act parcels that are not within LOAPUD's service boundaries from LOAPUD's SOI but doing so would result in illogical sphere boundaries and be inconsistent with Butte County General Plan land use designations.

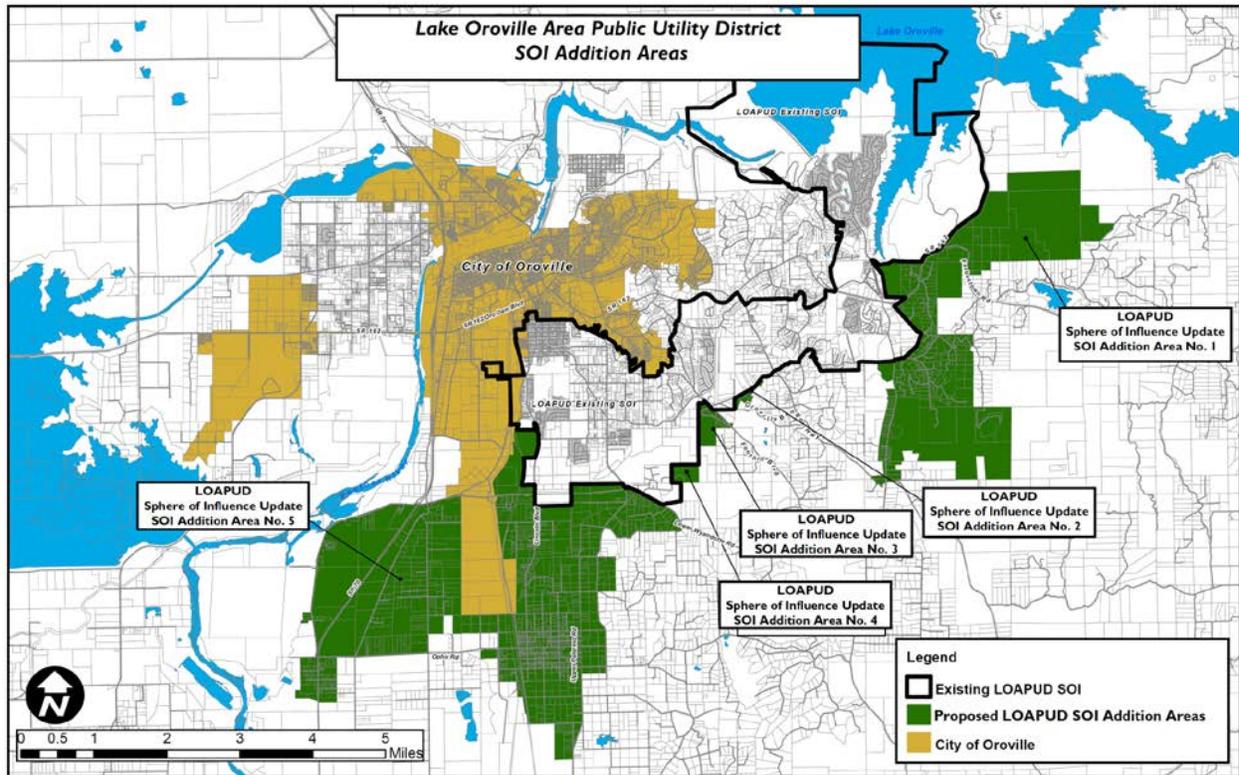
Approximately 7,000 acres (66%) of LOAPUD's existing SOI is within the City of Oroville's Sphere of Influence. Like LOAPUD, the City of Oroville provides wastewater collection and conveyance services for parcels within the City's jurisdictional boundaries. It is recognized that LOAPUD is the most logical wastewater service provider in LOAPUD's SOI given that the District has long provided this service to the south and east Oroville areas and has wastewater collection and conveyance infrastructure already in place throughout their SOI.

Sphere of Influence Expansion Request

An amendment to LOAPUD's Sphere of Influence is being requested by the District as a part of this SOI Plan. The District submitted a map with their SOI update request that showed their existing SOI, a proposed 5-10 year SOI, a proposed 15-20 year SOI, and a proposed area of interest beyond 20 years. The LOAPUD-proposed 5-10 year SOI would have added approximately 23,900 acres to District's current SOI. LAFCo staff reviewed the map submitted by LOAPUD and determined that the District's proposed 5-10 year SOI included large areas that are designated for parcels greater than one acre or more in size by the Butte County General Plan or are designated for agricultural uses. Parcels one acre or more in size would not normally require sanitary sewer services due to the large amount of area available for an on-site septic system. LAFCo staff, in cooperation with LOAPUD staff, altered the LOAPUD-proposed 5-10 year SOI based upon the land use designations contained in the Butte County General Plan, mostly including only parcels that were designated for parcel sizes of one acre or less. The resultant proposed SOI boundary map was reviewed by LOAPUD staff, who agreed with the changes.

The area now proposed to be added to LOAPUD's SOI - 1,826 parcels totaling approximately 9,700 acres (15 square miles) - represents almost a doubling of the District's current sphere yet remains reflective of the recent County General Plan update. The SOI addition areas are located

in five separate geographical areas as shown on the map below and on Figures 3-8, 3-9, and 3-10 of the Draft SOI Plan.



Proposed LOAPUD SOI Addition Areas

The purpose of the proposed SOI expansion is to allow for the future annexation of the area to LOAPUD for the provision of sanitary sewer service, which is preferred over on-site septic systems, to facilitate future development of those areas consistent with the allowed land uses and land use densities as established by the Butte County General Plan and Butte County Zoning Ordinance. The SOI addition areas include the proposed Rio D' Oro Specific Plan area along SR 70 south of Oroville, the proposed South Ophir Specific Plan Area, and the existing Stringtown Mountain Specific Plan area, which includes a large golf course resort development recently approved by Butte County.

Also included in the SOI addition area is the unincorporated community of Palermo. The Palermo area has numerous poorly performing or failing septic systems due to poor soils and high groundwater levels in the area. Parcels within the Palermo area will need the opportunity to utilize another method of wastewater treatment and the connection to a public sanitary sewer system would be an appropriate option to ensure the health and safety of area residents and to prevent surface and groundwater contamination. At present, LOAPUD represents a viable and logical option to serve the Palermo area.

Pursuant to California Government Code Section 56425(e), as part of a SOI update, the Commission is required to consider the following five factors and make appropriate determinations in relationship to each of the following:

1. The present and planned land uses in the area, including agricultural and open-space lands.
2. The present and probable need for public facilities and services in the area.
3. The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide.
4. The existence of any social or economic communities of interest in the area if the commission determines that they are relevant to the agency.
5. For an update of a sphere of influence of a city or special district that provides public facilities or services related to sewers, municipal and industrial water, or structural fire protection, that occurs pursuant to subdivision (g) on or after July 1, 2012, the present and probable need for those public facilities and services of any disadvantaged unincorporated communities within the existing sphere of influence.

Sections 3.1 to 3.5 of the Draft SOI Plan contain a detailed analysis and determinations for each of the five factors. Overall, the SOI Plan demonstrates that LOAPUD will have the capacity to provide effective and efficient sanitary sewer services to their expanded SOI. The proposed SOI expansion is needed to facilitate development of those areas in conformance with the Butte County General Plan.

The proposed SOI determinations for each factor are provided below.

Factor No. 1: The Present and Planned Land Uses in the Area, Including Agricultural and Open-Space Lands

The Lake Oroville Area Public Utility District serves an important role by providing wastewater collection and conveyance services to the mostly unincorporated territory south and east of Oroville. Uses within LOAPUDs existing and proposed SOI consists primarily of residential uses, along with public recreation uses, commercial uses, and industrial uses. LOAPUD's existing and proposed SOI is primarily designated by Butte County for relatively high levels of development, which may require connection to public sanitary sewer services to fully implement the County General Plan. Considering the existing and planned land uses in the area, LOAPUD is the logical sewer service provider to accommodate the planned growth.

Factor No. 2: The Present and Probable Need for Public Facilities and Services in the Area

LOAPUD provides sanitary sewer collection and conveyance services to parcels within its existing jurisdictional boundaries. LOAPUD will provide sewer services to parcels within its existing SOI upon annexation of those parcels to LOAPUD.

As identified in the County of Butte and the City of Oroville's General Plans, future residential, commercial, and industrial development within LOAPUD's SOI, including the Rio D'Oro Specific Plan area, the South Ophir Specific Plan area, and the Stringtown Mountain Specific Plan area, will require connection to a sanitary sewer system to develop at the densities allowed by the General Plans. Absent other large scale alternatives, LOAPUD is the most logical sewer service provider to serve the unincorporated south and east Oroville area in a traditional collection and treatment wastewater system.

The unincorporated community of Palermo has numerous poorly performing or failing septic systems due to poor soils and high groundwater levels in the area. Parcels within the Palermo area will need the opportunity to utilize another method of wastewater treatment and the connection to a public sanitary sewer system would be an appropriate option to ensure the health and safety of area residents and to prevent surface and groundwater contamination. At present, LOAPUD represents a viable and logical option to serve the Palermo area.

Factor No. 3: The Present Capacity of Public Facilities and Adequacy of Public Services that the Agency Provides or is Authorized to Provide

A detailed review of the adequacy and capacity of LOAPUD's sewer services was performed in the 2009 Wastewater Service Providers-Oroville Region Municipal Service Review. The municipal service review indicates the District will have the capacity to provide sanitary sewer service to the District's updated SOI. As identified in the District's Sewer System Master Plan, the District will need to install new sewer infrastructure, such as sewer pipes and pump stations, in order to provide service to the updated SOI. Infrastructure improvements needed as a result of new development will be funded by the development.

The SC-OR wastewater treatment facility currently does not have the reserve capacity to provide service for a full build-out scenario of LOAPUD's updated SOI, however, SC-OR has identified the infrastructure improvements needed to provide adequate wastewater treatment services for the three SC-OR member entities in the coming years. These infrastructure improvements needed as a result of new development will be identified as development is proposed in a Capacity Study and be funded by the new development.

Factor No. 4: The Existence of any Social or Economic Communities of Interest in the Area if the Commission Determines that they are Relevant to the Agency.

The social and economic communities within the District include a small portion of the City of Oroville, and the unincorporated communities/neighborhoods of South Oroville, the Mooretown Rancheria, the Feather Falls Rancheria, and Kelly Ridge.

The areas proposed to be added to the District's SOI include the proposed Rio D' Oro Specific Plan area along SR 70 south of Oroville, the Power House Hill Road/Lone Tree Road area, the unincorporated community of Palermo, the Miners Ranch Road area, portions of the Stringtown Mountain Specific Plan area, and the proposed Whisper Ridge Golf Resort, located on a portion of the Stringtown Mountain Specific Plan area.

The proposed sphere has established substantive social and economic ties with the Oroville region given that is where the majority of residents of the updated SOI work and shop.

Factor No. 5: The Present and Probable Need for those Public Facilities and Services of any Disadvantaged Unincorporated Communities Within the Existing Sphere of Influence.

Large portions of LOAPUD's updated SOI are identified as disadvantaged unincorporated communities, including the unincorporated community of Palermo. The disadvantaged unincorporated communities within LOAPUD's SOI will require District sanitary sewer services in the future to replace poorly performing or failing septic systems, or to facilitate new development. Therefore, there is a present and probable need for public sanitary sewer services within the areas designated as disadvantaged unincorporated communities in LOAPUD's updated SOI.

Butte LAFCo Policies

Section 3 (Sphere of Influence) of Butte LAFCo Policies provides the standards for determinations regarding spheres of influence. Policy 3.1.4 states that when establishing the boundaries of a sphere of influence for an agency, LAFCO will consider the factors listed in Section 56425 of the Government Code as well as the factors found in LAFCo Policy 3.1.4.1, which state that LAFCo will discourage including lands in an agency's sphere of influence that are:

- Unlikely to require the services provided by the agency, for example, lands not designated for inclusion to a city by the applicable general plan;
- Areas where development is constrained by topographical factors;
- Areas where the projected and/or historical growth rates do not indicate a need for service within the time frame of the Sphere Plan;
- Areas in an agency's sphere of influence which cannot feasibly be served by the agency within a 20 year time frame consistent with the Sphere Plan.

The proposed SOI expansion is consistent with this Policy because:

- The Butte County General Plan shows, and plans for, the subject areas to be developed within the 20-year time span of the General Plan;
- There are no significant topographical factors that constrain development of the SOI expansion area;
- LOAPUD is the most logical sanitary sewer service provider in the area; and
- As shown in the Draft SOI Plan and Municipal Service Review, LOAPUD would plan for, and be able to feasibly serve, future development in the SOI expansion area.

Butte LAFCo Policy 3.1.8 states that LAFCo shall not approve a change to a sphere of influence to include lands that are subject to a Williamson Act contract if the annexing agency has the ability to provide sewer service, nonagricultural water, streets and/or roads unless these facilities or services specifically benefit the land uses that are allowed under the contract and the landowner consents to the sphere change. However, Butte LAFCo Policy 3.1.8.1 states that the Commission, may, at its discretion, approve a sphere update or amendment which includes a Williamson Act parcel if it finds either of the following:

- The update or amendment would facilitate planned, orderly and efficient patterns of land use or provisions of services, and the public interest in the change substantially outweighs

- the public interest in the current continuation of the contract beyond its current expiration date; or
- That the change is not likely to adversely affect the continuation of the contract beyond its current expiration date.

The areas proposed to be added to LOAPUD's SOI do not contain any parcels that are subject to a Williamson Act contract. As previously noted in this report and in the Draft SOI Plan, there are five parcels within the District's existing SOI that are subject to Williamson Act contracts. The District's proposed SOI expansion would be consistent with Policy 3.1.8 in that the proposed SOI expansion would facilitate planned, orderly and efficient patterns of land use or provisions of services as established by the Butte County General Plan. The five Williamson Act parcels would not be adversely affected by remaining within the District's SOI because no changes would occur to the parcels.

Although not applicable to SOI proposals, Butte LAFCo Policy 2.13.1 states that LAFCo will apply a heightened level of review when considering proposals for changes of organization (such as an annexation) that are likely to result in the conversion of prime agricultural/open space land use to other uses. Only if the Commission finds that the proposal will lead to planned, orderly, and efficient development, will the Commission approve such a conversion. For purposes of this standard, a proposal leads to planned, orderly, and efficient development only if all of the following criteria are met:

- The land subject to the change of organization or reorganization is contiguous to either lands developed with an urban use or lands within the sphere and designated for urban development;
- The proposed development of the subject lands is consistent with the Sphere of Influence Plan, including the Municipal Service Review of the affected agency or agencies and the land subject to the change of organization is within the current 10-year Sphere of Influence boundary;
- The land subject to the change of organization is likely to be developed within five years. In the case of very large developments, annexation should be phased wherever feasible. If the Commission finds phasing infeasible for specific reasons, it may approve annexation if all or a substantial portion of the subject land is likely to develop within a reasonable period of time;
- Insufficient vacant non-prime or open space land exists within the existing agency boundaries or applicable 10-year Sphere of Influence that is planned and developable for the same general type of use; and,
- The proposal will have no significant adverse effect on the physical and economic integrity of other agricultural/open space lands.

LAFCo will review all future annexation requests within the LOAPUD SOI for consistency with the agricultural preservation requirements of the Cortese-Knox-Hertzberg Act and with Butte LAFCo Policies. Based upon the County's proposed land use plan for the SOI expansion areas, future urban development within those areas will result in the planned, orderly, and efficient development of the areas as required by California Government Code section 56377.

Policy Summary

As shown above, the proposed SOI expansion is consistent with the applicable Butte LAFCo policies regarding SOI proposals.

Agricultural Impacts

As identified in the Draft SOI Plan, portions of the existing SOI and the proposed SOI expansion area contains prime agricultural soils and some agricultural uses. The County's 2030 General Plan and the Draft SOI Plan show that most of the SOI expansion area is designated for future residential, commercial, public, and industrial uses and future development of the area will result in the permanent conversion of agricultural lands to urban uses. Additionally, future development in the SOI expansion area may have a significant impact on adjacent agricultural operations.

The Draft Environmental Impact Report prepared for the LOAPUD Sphere of Influence Update identified impacts to agricultural resources as "Potentially Significant" (Impact 3.1-1). The DEIR found that the impacts to agricultural resources cannot be mitigated and that the impacts were significant and unavoidable. The DEIR found that the SOI Update would not have any Impacts to Williamson Act contracts.

The environmental impact report certified by the County of Butte for their General Plan 2030 determined that the impacts to agricultural resources are significant and unavoidable, with no feasible mitigation available. In adopting the General Plan 2030, the Butte County Board of Supervisors adopted findings of overriding considerations for impacts to agricultural resources.

The County's General Plan 2030 includes numerous policies and programs that address potential impacts to agricultural uses caused by implementation of the General Plan and the SOI Plan. Applicable Goals and Polices from the Agricultural Element of the Butte County General Plan 2030 include:

- **Goal AG-2** Protect Butte County's agricultural lands from conversion to non-agricultural uses.
- **Policy AG-P2.1** The County shall work with the Local Agency Formation Commission (LAFCO) to create and maintain a consistent approach to the conservation of agricultural land through the designation of reasonable and logical Sphere of Influence (SOI) boundaries.
- **Policy AG-P2.2** The County supports private conservation organizations that utilize voluntary conservation easements as a tool for agricultural conservation, continued agricultural use, agricultural supportive uses, tax breaks and similar goals.
- **Policy AG-P2.3** Redesignation and rezoning of land designated as Agriculture to an urban designation shall be allowed only when the applicant can demonstrate that the following criteria are met and mitigated:
 - a. The lot(s) for which conversion is requested is adjacent to uses other than agriculture or agricultural support uses (e.g. receiving plants, hulling plants).
 - b. The conversion will not be detrimental to existing agricultural operations.
 - c. The conversion land is adjacent to existing urban infrastructure and conversion will constitute a logical contiguous extension of a designated urban area.
 - d. No feasible alternative exists that is less detrimental to agriculture.
 - e. Full mitigation of impacts to the extent allowed under the law is provided, including, but not limited to, roads, drainage, schools, fire protection, law enforcement, recreation, sewage and lighting.

- **Policy AG-P2.4** As set forth in the Zoning Ordinance, rezoning agricultural land to agricultural zones with lower parcel size restrictions shall be minimized and allowed only if specific criteria are met.
- **Policy AG-P2.5** When a request is made for a Conditional Use Permit on a lot(s) with existing agricultural operations, an agricultural maintenance plan to provide for the continuation of existing agricultural activities shall be submitted, in accordance with the Zoning Ordinance. The plan shall be reviewed for comments and conditions by the Agricultural Commissioner and Development Services prior to the Planning Commission hearing on the Conditional Use Permit.
- **Policy AG-P2.6** The County shall retain and protect agricultural lands through the use of proactive land use techniques, including, but not limited to, the following:
 - a. Clustered development projects, allowing a “clustering” of permitted densities in a compact configuration in order to protect agricultural land.
 - b. Density bonuses, permitting increased density on developable land in exchange for protection of agricultural land.
- **Action AG-A2.1** Create an agricultural mitigation ordinance in which developers will be required to permanently protect agricultural land of equal or greater value in place of land that is redesignated from Agriculture to a non-agricultural designation. This ordinance may include the option of paying an in-lieu fee that would contribute to an agricultural resource protection fund that could be used to purchase voluntary conservation easements or complete other projects that will protect and conserve agricultural land. The ordinance will establish mitigation standards that address the valuation and geographic location of agricultural land.
- **Action AG-A2.2** Encourage municipalities in Butte County to adopt similar agricultural mitigation ordinances.
- **Goal AG-5** Reduce conflicts between urban and agricultural uses and between habitat mitigation banking and agricultural uses.
- **Policy AG-P5.1** Agricultural uses shall be the primary uses within the Agriculture land use designation. Residential uses, such as a farmer’s home, and habitat mitigation banking uses shall be considered accessory uses.
- **Policy AG-P5.2** Urban development and habitat mitigation banking uses shall not limit the financial sustainability of agricultural operations.
- **Policy AG-P5.3** The Zoning Ordinance shall require that a buffer be established on property proposed for residential development in order to protect existing agricultural uses from incompatible use conflicts. The desired standard shall be 300 feet, but may be adjusted to address unusual circumstances.
- **Action AG-A5.1** Periodically update the agricultural buffer setback requirements in the Zoning Ordinance and the Agricultural/Residential Buffer Implementation Guidelines to reduce conflicts between agricultural and residential and nonresidential urban uses.
- **Policy LU-P1.1** The County shall protect and conserve land that is used for agricultural purposes, including cropland and grazing land.
- **Policy LU-P1.3** The County shall minimize potential conflicts between agricultural and urban uses.

It should be noted that the County has not yet adopted any of the programs as required by the above-noted General Plan policies, such as the establishment of an agricultural conservation

easement or in-lieu fee program. Staff from the County, LAFCo, and from several cities recently held a series of meetings with staff from the Northern California Regional Land Trust to discuss the creation of an agricultural mitigation ordinance. However, the County has not yet taken any formal action to adopt such an ordinance.

LAFCo will review all future subdivision projects and annexation requests within LOAPUD's SOI for consistency with the agricultural preservation requirements of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Butte LAFCo Policies, and with the goals, programs, and policies contained in the Butte County General Plan. Approval of any future annexations in the proposed SOI expansion area may be contingent on the County of Butte first adopting an agricultural protection program as required by their General Plan.

Future Annexations

It should be clearly understood that the Commission, in reviewing and adopting the supporting environmental documents, is *only* considering the adoption of the Sphere of Influence Plan, which includes adding additional area to LOAPUD's Sphere of Influence, and not specific annexation proposals or individual development projects that may present specific impacts not associated with the broader policy question at hand. The primary purpose of the Sphere of Influence is to provide guidance for the location of future growth and establish the ability of LOAPUD to provide sanitary sewer services to the areas identified by Butte County for new growth. It is not the purpose of the Sphere of Influence Plan to resolve all potential impacts of new development, but to provide guidance for local decision makers in managing growth boundaries of local agencies. The Commission should make it clear to LOAPUD that it will not allow the County or LOAPUD to solely rely on the LOAPUD SOI Update EIR or the Butte County General Plan 2030 EIR for future project-specific impacts. This statement will be included as a condition of approval for the SOI Update.

Changes to the Draft SOI Plan

Staff has found several minor errors in the Draft SOI Plan/MSR Update that should be corrected for the adopted version. The requested changes are identified below.

<u>Page</u>	<u>Change</u>
SOI Plan Page 11	Table 3-3. In the "Parcels" column of the "Agricultural" row, change "10" to "9"
MSR Pages 5-23 & 5-27	Determination 5-17. Change "aduit" to "audit".

Additional errors or omissions may be found and will be brought to the Commission's attention for correction in the Final SOI Plan/MSR Update.

Environmental Determination

The California Environmental Quality Act (CEQA) requires that the Commission undertake and review an environmental analysis before granting approval of a project, as defined by CEQA. Butte LAFCo is the Lead Agency for environmental review for the proposed MSR update and is also the Lead Agency for environmental review for the SOI Plan.

The Municipal Service Review update for LOAPUD is categorically exempt from the preparation of environmental documentation under a classification related to information gathering (Class 6 -

Regulation section 15306), which states: "Class 6 consists of basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. These may be strictly for information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted, or funded." The MSR collects data for the purpose of evaluating municipal services provided by the agency. There is no land use change or environmental impact created by such a study. There is no possibility that the revisions to the MSR determinations will have a significant effect on the environment because there are no land use changes associated with the revised determinations or with the MSR itself.

A program-level Draft Environmental Impact Report (DEIR) for the SOI Plan/Update was prepared by De Novo Planning Group under contract with LOAPUD. The DEIR is currently within a 45-day public review period, which runs from May 9 to June 24, 2013. Copies of the DEIR were provided to the State of California for review by State agencies and copies were provided to over twenty local affected agencies. As of the date of this report, no comments have been received on the DEIR. However, the public review period is still open and comments may still be received.

A program EIR is used to address the impacts of "a series of actions that can be characterized as one large project and are related...in connection with the issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program." Most general plans in California are accompanied by program (rather than project) EIRs. The analysis in the program EIR is considered the first tier of environmental review and creates the foundation upon which future, project-specific CEQA documents can build. Future development projects within LOAPUD's Sphere of Influence, and future annexations to LOAPUD, would be subject to the requirements of CEQA. Butte County would determine on a project-by-project basis whether the appropriate action for future development projects, such as parcel and subdivision maps, would be a CEQA Exemption, Negative Declaration, or an EIR. LOAPUD would determine on a project-by-project basis whether the appropriate action for future annexations to the District would be a CEQA Exemption, Negative Declaration, or an EIR.

The Draft Environmental Impact Report prepared for the LOAPUD Sphere of Influence Update identified the following environmental impacts as "Potentially Significant" and for which the impacts were determined to be significant and unavoidable:

- Agricultural Resources (Impact 3.1-1)
- Cumulative Air Quality (Impact 3.2-3)
- Cumulative Greenhouse Gas Emissions (Impact 3.3-3)
- Utilities-Wastewater Services (Impact 3.5-1)
- Cumulative Impacts (Impacts 4.1, 4.2, 4.3, and 4.6)

The Commission will review the DEIR at the June 6 meeting, receive comments on it from the public and affected agencies, and direct staff and the EIR consultant to make any necessary changes. At the July 10 Commission meeting, the Commission will review and adopt a Final EIR, which consists of the Draft EIR with any corrections or changes to it, copies of written comments received on the DEIR and responses to those comments, Findings of Fact, a Statement of Overriding Considerations, and, if necessary, a Mitigation Monitoring and Reporting Program.

It should be noted that Butte County prepared a program-level EIR in conjunction with the County's General Plan 2030. The Butte County General Plan 2030 EIR evaluated the potential environmental impacts of implementation of the County's 2030 General Plan, which designated

large areas of the south and east Oroville areas for higher densities of residential, commercial, and industrial uses. The County's EIR identifies potentially significant environmental effects, for which mitigation measures have been adopted. In addition, the EIR identifies potentially significant unavoidable environmental effects, for which the County adopted findings and a statement of overriding considerations.

In making a determination of the adequacy of an Environmental Impact Report, the Commission should consider the following direction as set forth in the CEQA Guidelines, Section 15151:

CEQA Guidelines Section 15151:

An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

CONCLUSION

The proposed LOAPUD SOI Update, which includes adding additional area to LOAPUD's existing SOI, expansion is needed to accommodate future growth as identified in the Butte County General Plan. The SOI Plan also anticipates that LOAPUD would have the necessary resources to provide sanitary sewer services to its existing and proposed SOI area.

The proposal substantially conforms to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 and with LAFCo policy.

COMMISSION ACTION

After reviewing this report, the Draft MSR Update, the Draft SOI Plan, the Draft Environmental Impact Report, and any testimony or materials that are presented, staff recommends the Commission take the following actions:

- A. Direct staff and the EIR consultant to make any changes to the Draft MSR Update, the Draft SOI Plan, and the Draft EIR as may be needed to correct any errors or omissions.
- B. Acknowledge that the public review period for the Draft EIR does not end until June 24, 2013, and that additional comments may be received on this document.
- C. Continue the hearing open to the Commission's July 10, 2013, meeting for additional public comments and for adoption of the Final EIR, adoption of Findings of Fact, adoption of a Statement of Overriding Findings, adoption of a Mitigation Monitoring and Reporting Program if necessary, and adoption of a Final SOI Plan and MSR Update.

Respectfully submitted,

Stephen Betts

Stephen Betts
Deputy Executive Officer

Attachment 1: Proposed LOAPUD Municipal Service Review Determinations (Page 16)

Attachment 1

DETERMINATION 5-1: SEWER LATERAL PROGRAM

The sewer lateral inspection program is a fundamental component of the District's overall efforts to increase system efficiency and reduce I&I levels. It is recognized that the inspection program may not yield significant results for many years considering the number of laterals and the criteria for conducting the inspections.

DETERMINATION 5-2: SANITARY SEWER COLLECTION AND CONVEYANCE SYSTEM

The District's sanitary sewer system, most of which has been constructed in the last 35 years, is generally in good condition. LOAPUD's collection system currently has no significant capacity issues. However, large development project may be required to upgrade the existing collection system downstream if additional capacity is required.

DETERMINATION 5-3: SANITARY SEWER OVERFLOWS

LOAPUD has had two minor sanitary sewer system overflows since mandatory reporting of SSOs began in 2007. This low number of SSOs is an indication that LOAPUD's sewer system is being adequately operated and maintained.

DETERMINATION 5-4: SANITARY SEWER MANAGEMENT PLAN

LOAPUD has adopted all elements of its Sanitary Sewer Management Plan as required by the State Water Quality Control Board.

DETERMINATION 5-5: SANITARY SEWER SYSTEM CAPACITIES

Based on a system-wide average dry weather flow of 0.81 mgd, LOAPUD's sewer system has adequate capacity to handle existing and future wastewater flows. The District adds new lines and upgrades existing lines as needed.

DETERMINATION 5-6: SC-OR EAST INTERCEPTOR SEWER TRUNK LINE CAPACITY

The SC-OR East Interceptor trunk sewer line, which serves only LOAPUD's sanitary sewer system, has a current capacity of 15 mgd which is greater than LOAPUD's peak flow of 14 mgd projected for the year 2030.

DETERMINATION 5-7: SC-OR MAIN INTERCEPTOR SEWER TRUNK LINE CAPACITY

Data provided by SC-OR shows that the Main Interceptor trunk sewer line may experience surcharge conditions during peak weather flows due to limitations on the influent pumping capacity at the WWTF. Due to this limited influent pumping capacity, the Main Interceptor has reached 92% of capacity during storm events. To address this concern, SC-OR is proposing to both increase the capacity of the Main Interceptor and increase the WWTF influent pumping capacity to 30 mgd, which will reduce the chance of surcharging and SSOs on the Main Interceptor. Additionally, SC-OR anticipates that I&I reduction programs recently implemented by the member entities is expected to reduce I&I flows into the WWTF.

DETERMINATION 5-8: INFLOW AND INFILTRATION FLOWS

During 2008, LOAPUD had an average dry weather flow of 0.81 mgd, but an average wet weather flow of 4.8 mgd, with a wet weather peaking factor of 9.0, all of which indicate that LOAPUD has excessive inflow and infiltration entering their sewage collection system.

DETERMINATION 5-9: SANITARY SEWER SYSTEM INSPECTION

LOAPUD utilizes smoke testing, CCTV equipment, flow meters, and manhole inspections to help identify the locations of I&I which have resulted in numerous repairs to their collection system. LOAPUD should continue to use this approach to solving I&I in their collection system.

DETERMINATION 5-10: SANITARY SEWER SYSTEM INSPECTION

LOAPUD currently cleans and inspects approximately 15 miles (21 percent) of their sewer system each year and should consider enhancing this program each year in a greater effort to reduce I&I and prevent sanitary sewer overflows. The clean and inspect program has been enhanced through the SC-OR pipe patching program.

DETERMINATION 5-11: SEWER LATERAL TESTING PROGRAM

LOAPUD recently adopted a comprehensive sewer lateral testing program that will help reduce I&I entering private sewer laterals and should consider assistance and outreach programs to landowners to encourage greater participation in this program.

DETERMINATION 5-12: FINANCIAL ABILITY OF AGENCY TO PROVIDE SERVICES

LOAPUD's primary source of revenue is service fees (85%) with additional revenue from connection charges, property taxes, and earned interest.

DETERMINATION 5-13: FINANCIAL ABILITY OF AGENCIES TO PROVIDE SERVICES

Current sewer service and connection charges, combined with income from other sources, are adequate to cover the costs of providing services; however, the District should continue to review and revise their sewer service and connection charges to recover operational and maintenance costs, build a capital reserve and reduce its reliance on revenue from property taxes. The District implemented a rate increase on July 1, 2011, which includes a \$1.00/month/EDU annual increase to sewer service rates for 5 years beginning July 1, 2012.

As the implementation of the new SSMP/SSO requirements proceed, it is likely that all of the SC-OR member entities will require rate increases to cover increased SSMP-related operating expenses (systematic sewer collection system cleaning, inspection, repair, and reporting costs).

The District submits its annual budget to the County Auditor in compliance with California Government Code Section 53901.

DETERMINATION 5-14: OPPORTUNITIES FOR COST AVOIDANCE AND SHARED FACILITIES

While the District appears to utilize internal cost avoidance opportunities, facilities sharing efforts are not actively pursued. LOAPUD and the other SC-OR member entities should consider establishing a program to 1) share equipment, materials, personnel, expertise, and training and 2) consider purchasing supplies and materials in bulk.

The SC-OR-sponsored pipe patching program is a good example of the cooperation that has recently occurred between the SC-OR member entities, resulting in significant cost savings.

DETERMINATION 5-15: GOVERNMENTAL STRUCTURE

LOAPUD is governed by a five-member Board of Directors elected at large by voters within the District. LOAPUD holds meetings which are open and accessible to the public. LOAPUD maintains accountability and compliance in its governance, and public meetings appear to be held in compliance with Brown Act requirements.

DETERMINATION 5-16: MANAGEMENT EFFICIENCIES

The Lake Oroville Area Public Utility District operates with minimal staff, and contracts for some services such as engineering consulting. The overall management structure of LOAPUD is sufficient to account for necessary services and to maintain operations in an efficient and effective manner. LOAPUD is adequately staffed at this time.

DETERMINATION 5-17: WEBSITE

LOAPUD maintains a website that contains useful public information. The District's website includes Board of Directors' meeting agendas, LOAPUD rules and regulations, fee schedules, improvement standards, budget, financial audit, the District's Master Plan, and the District's Sanitary Sewer Management Program. LOAPUD should also consider placing information on I&I and the District's sewer lateral testing program on their website.