

1.0 INTRODUCTION

This Draft Environmental Impact Report (DEIR) is prepared to address the potential environmental effects of the Nevada County Local Agency Formation Commissions (LAFCo) update to the proposed Sphere of Influence (SOI) Plan for the City of Nevada City (proposed project.)¹. LAFCo is required by State law to develop a SOI plan for each city and special district within the county. An SOI plan considers the probable physical boundaries and service area of a local agency and designates lands which are eligible to be annexed to the agency within the planning period. Inclusion in the City SOI would allow provision of municipal services such as public sewer and other municipal services that would facilitate development. This EIR will analyze the indirect impacts of inclusion in the Sphere. As the first discretionary decision in a chain of decisions that can lead development and impacts of development, the California Environmental Quality Act (CEQA) and State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000, et seq) and California Public Resources Code Section (PRCS) 21000, et seq. requires LAFCo to consider those indirect impacts.

CEQA requires California public agencies at all levels to consider the environmental consequences of projects for which they have discretionary authority. The public agency with the principal responsibility for carrying out or approving a project is the “lead agency.” Local Agency Formation Commissions are required under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, (CKH) Section 56425 to adopt and periodically update city SOI’s. Consequently, Local Agency Formation Commissions normally have the principal responsibility for SOI plans and normally act as the lead agency under CEQA for such projects.

The proposed SOI Plan update is discussed in detail within this Chapter in *Section 1.1 Proposed Project*. The CEQA process as it applies to unique circumstances for a SOI update is discussed in *Sections 1.2 EIR Scope, Issues, and Concerns*, and *Section 1.5 Environmental Review Process*, further below.

1.1 PROPOSED PROJECT

Overview

LAFCo is responsible for determining the boundaries of cities and special districts within its area of responsibility and jurisdiction. Along with its own locally adopted guidelines, the Nevada County LAFCo operates under the Cortese-Knox-Hertzberg (CKH) Local Government Reorganization Act of 2000, located at Section 56000 and following in the Government Code. Under the provisions of the Act, LAFCo has a mandate of:

- Discouraging urban sprawl
- Preservation of prime agricultural land and open space
- Assuring provision of efficient local government services
- Encouraging orderly growth and development of local agencies

¹ State Clearing House (SCH#) 2019029150

LAFCo's responsibilities include review of and action on proposals for:

- Formation of new local public agencies,
- Changes in boundaries of existing local agencies,
- Changes in services provided by special districts; and
- Other changes in organization of local agencies, such as consolidations and dissolutions.

To assist LAFCo in making these decisions, the Legislature requires LAFCo's to develop informational reports on local agencies Municipal Service Review (MSR) and plans called SOI's establishing the probably physical boundaries for each agency.

MSRs are informational reports that provide information on the provision of public services by local public agencies and the capacity of the agencies to provide services. They are prepared either on an individual agency basis or regional basis. This information is then used to prepare a SOI plan for each public agency.

SOI's are operational planning documents that are intended to establish what areas are eligible for annexation to the agency and under what conditions annexation will occur. A SOI is defined as a plan for the probable physical boundary and service area of a local agency, as determined by the LAFCo. CKH defines the purpose and intent of a SOI as an important tool for "planning and shaping the logical and orderly development and coordination of local agencies so as to advantageously provide for the present and future needs of the county and its communities."

The MSR and SOI Plan guide LAFCo's determinations with respect to annexations to a city or district. Annexations cannot be approved by LAFCo unless they are consistent with the agency's SOI. Therefore, including property within a city's SOI normally implies annexation within the timeframe of the SOI plan, which Nevada County LAFCo has established by policy as a 20-year timeframe.

LAFCo is required to adopt a SOI plan for each city and district in its jurisdiction and *every five years, as necessary, review and update each SOI*. Nevada City's SOI was first adopted by LAFCo in 1983 with no environmental review. The SOI was affirmed by LAFCo in 2008 with a negative declaration. LAFCo is now in the process of updating the SOI Plan for the City again as required by CKH.

As discussed above, LAFCo has approval authority related to SOI's and associated annexations. LAFCo has the power to approve or disprove applications, or to impose reasonable conditions on approvals in limited circumstances (i.e., provision of public services and utilities). LAFCo; however, has limited authority related to land use decisions and conditions that can be placed upon proposed or approved developments. Therefore, while LAFCo is charged with considering the impacts of land uses in its decision making, LAFCo is prohibited from directing specific land use or zoning actions. Hence, LAFCo may disapprove an application for an annexation if that development could not be provided city services, but LAFCo cannot exercise direct land use authority. Therefore, imposition of mitigation and conditions of approval on projects and areas to be annexed is typically the responsibility of the associated municipality.

Project Description

The proposed project is an update to the SOI Plan for Nevada City and comprises the proposed SOI Plan update area that encircles Nevada City. The City's jurisdictional boundaries include approximately 1,470 incorporated acres and the current SOI includes approximately 2,702 acres of unincorporated county land. Within its boundaries, the City provides a full portfolio of municipal services, including treated water, public sewer, police, fire protection, and recreational areas. It should be noted, that substantial portions of the incorporated City areas are currently served by Nevada Irrigation District (NID) for treated water.

The proposed project or any update to the SOI does not include any changes to existing land uses, land use designations, or zoning, but inclusion in the SOI is the first step towards annexation of the territory. Annexation would result in the area becoming a part of the incorporated City and thus the area(s) would have access to municipal services.

The discussion of the proposed project includes the LAFCo/City Preferred Consensus Alternative (Consensus Alternative) which is specifically identified as the Preferred Alternative in accordance with CEQA requirements. The Consensus Alternative has been developed over the last few years through a collaborative process and coordination between the City and LAFCo. Under the Consensus Alternative, the City and LAFCo staff have developed a 'consensus map' that includes four priority annexation areas and also excludes some territory represented in the current 2008 City SOI that would be removed from the SOI. The Consensus Alternative is summarized below and is discussed in greater detail in *Chapter 3.0 Project Description*. The EIR also includes three other alternatives, which are listed below and described in detail in *Chapter 3.0 Project Description* and analyzed in *Chapter 6.0 Alternatives*.

LAFCo/City Preferred Consensus Sphere Alternative

The Consensus Alternative contains four Priority Annexation Areas for which the City would initiate prompt annexation proceedings and are described below:

Annexation Area #1 - is located just south of the City adjacent to SR 49\20. Annexation Area #1 consists of a northerly and southerly area separated by approximately 500 feet and totals approximately 16.63 acres. The northerly location is a triangular-shaped parcel approximately 5.29 acres in size and is generally bound by SR 20 to the west, Gold Flat Road to the north, and is accessed by Granholm Lane to the south

Annexation Area #2 - is located in the northwestern part of the City adjacent California SR 49. Annexation Area #2 is approximately 86 acres in size and is generally bound by SR 49 on the north, the existing City Boundary to the east, American Hill Road to the south, and Constitution Court to the west.

Annexation Area #3 - is located in the northeastern part of the City and is approximately 17 acres in size. Annexation Area #3 includes parcels on both sides of Willow Valley Road east of the existing City Boundary but does not include the site of the former "Health Education and Welfare Building."

Annexation Area #4 - is located in the northeastern part of the City and is approximately 23 acres in size. Annexation Area #4 is generally bound by Red Dog Road on the north, Park Avenue on the east and south, and the City boundary to the west.

Alternatives

As part of the project development process, and as required by CEQA, three alternatives have been developed to the preferred Consensus Alternative. The Alternatives were developed through consultation with City staff, consideration of the public interest, consideration of the legal requirements of CEQA and the environmental review process. The three Alternatives are briefly described below and discussed in additional detail in *Section 6.0 Alternatives*.

Original LAFCo Staff Recommendation Alternative: Consists of the original LAFCO recommended SOI boundary and includes approximately 1,650 acres.

City Recommendation Alternative: Consists of the original 1983 LAFCo-adopted SOI plan for the city, and would include the lands contained within the SOI plan affirmed by LAFCo in 2008, and

“No Project” Alternative: This alternative includes adoption of a coterminous SOI, meaning the City’s SOI would only include the existing territory within the City’s jurisdictional boundary.

1.2 EIR SCOPE, ISSUES, AND CONCERNS

EIR SCOPE

To begin the process of preparation of an EIR and to help determine the scope of an EIR, one of the first steps is typically the preparation of a Notice of Preparation (NOP). The NOP is a document stating that an EIR will be prepared for a project and is submitted to the Office of Planning and Research (OPR) for publication. The NOP also is sent to each responsible and trustee agency, as well as every federal agency that is involved in approving or funding the project. In part, the intent of the NOP is to elicit feedback and comment from these agencies as well as members of the public and stakeholders regarding environmental issues and topics the NOP indicates will be discussed in the EIR as well as those that commenter wants to see included, or thinks should be a part of the project and discussed in the EIR. The NOP is a required part of the environmental review process intended to provide the agencies and others with sufficient information describing the project and to prompt meaningful comment for the 45-day public review period.

In accordance with State CEQA Guideline §15082 and § 15375, the NOP for the proposed project was prepared and sent to responsible and trustee agencies as well as stakeholders who had requested notification. The NOP was published with the California State Clearinghouse and issued on February 25, 2019, which began the required 30-day comment period that extended until March 27, 2019. The NOP contained a thorough description of the proposed project, location of the proposed project, maps depicting each alternative, and provided a brief description of the probable environmental effects. The NOP was circulated to local, state, and federal agencies and other interested parties, consistent with the requirements of CEQA and thus, provided adequate information for agencies and the public to make a meaningful response.

The NOP indicated the following environmental topics on the listing of resources in Appendix G of the CEQA Guidelines will be addressed:

- Aesthetics
- Air Quality
- Biological Resources
- Cultural and Tribal Cultural Resources
- Greenhouse Gas Emissions
- Hydrology and Water Quality
- Land Use and Planning
- Public Services
- Transportation and Traffic
- Utilities and Service Systems
- Significant Unavoidable Impacts
- Cumulative Impacts
- Alternatives

Of the listed environmental resource areas there are many governmental agencies that have jurisdiction over them and provide guidance on their use. Accordingly, certain projects or actions undertaken by a Lead Agency require subsequent oversight, approvals, or permits from these public agencies to be implemented. Such other agencies are referred to as “Responsible Agencies” and “Trustee Agencies.” Pursuant to State CEQA Guidelines §15381 and §15386, as amended, Responsible Agencies and Trustee Agencies are respectively defined as follows:

- *“Responsible Agency” means a public agency that proposes to carry out or approve a project for which a Lead Agency is preparing or has prepared an EIR or Negative Declaration. For the purposes of CEQA, the term “Responsible Agency” includes all public agencies other than the Lead Agency that have discretionary approval power over the project (State CEQA Guidelines §15381).*
- *“Trustee Agency” means a State agency having jurisdiction by law over natural resources affected by a project that are held in trust for the people of the State of California. Trustee Agencies include . . . (State CEQA Guidelines §15386).*

1.3 NOTICE OF PREPARATION RESULTS

Comment on the NOP

The NOP sufficiently described the proposed project and informed readers such that meaningful responses were provided. The NOP solicited a total of 11 comment letters that included suggestions regarding guidance pertaining to specific contents, conformance with CEQA requirements, and the scope and content of the DEIR. Comment letters were received from the following agencies, organizations, and individuals:

Regional Agencies

- Caltrans District 3
- Central Valley Regional Water Quality Control Board (CVRWQCB)

Local Agencies

- County of Nevada Community Development Agency
- Nevada County Consolidated Fire District
- Nevada Irrigation District

Special Interest Groups and Individuals

- Native American Heritage Commission (NAHC)
- Shute, Mihaly & Weinburger, LLP representing the Community Environmental Advocates (CEA) Nevada Street/Willow Valley Area Neighborhood Association (which joined the comments)
- Gerald and Kathy Stapp

1.4 ENVIRONMENTAL REVIEW PROCESS

Local Agency Formation Commission

Under Resolution No. 12-07 effective September 20, 2012 and adopted pursuant to California Code of Regulation (CCR) §15022(d) which states, “In adopting procedures to implement CEQA, a public agency may adopt the State CEQA Guidelines through incorporation by reference. The agency may then adopt only those specific procedures or provisions described in subsection (a) which are necessary to tailor the general provisions of the guidelines to the specific operations of the agency. A public agency may also choose to adopt a complete set of procedures identifying in one document all the necessary requirements.” In accordance with this allowance, LAFCo adopted the CEQA Implementing Procedures, which have been used for the environmental review process for the preparation of this EIR.

EIR Overview

An EIR is an informational document that appraises decision-makers and the general public of the potential significant environmental effects of a proposed project. Hence, the purpose of this EIR is to review the existing conditions, analyze potential environmental impacts, and identify feasible mitigation measures to reduce potentially significant effects related to the update of the SOI Plan. In accordance with §15121 of the State CEQA Guidelines, a primary purpose of this EIR is to provide decision-makers and the public with specific information regarding the environmental effects associated with the proposed project. This EIR also identifies ways to minimize the significant effects and describes reasonable alternatives to the proposed project. When appropriate and feasible, mitigation measures are provided which may be adopted as Conditions of Approval in order to reduce the significance of impacts resulting from the proposed project. In addition, this EIR is the primary reference document in the formulation and implementation of a mitigation monitoring program for the proposed project. To assist reviewers in understanding this EIR, the State CEQA Guideline that defines applicable terminology and sections that dictate the format and contents of the environmental analysis within the EIR are described below.

The following discussion also describes the specific CEQA Guidelines Section (§) regarding specific types of EIR’s and the methodology for evaluation of impacts. Because CEQA defines a project in broad terms and many different agency actions are considered for these projects, CEQA also provides different methodologies to inform and disclose impacts to the public and decision-makers. Although CEQA contains numerous Guidelines that are applicable to the proposed project, the following list describes those Guidelines that are the most germane to the proposed project and that were discussed in comments received on the NOP. The following pages explain how these Guidelines and CEQA §’s have been included

in the analysis of this EIR. It should be noted that in some instances the entire State CEQA § is not quoted and in some instances has been abbreviated.

State CEQA Guideline § 15378 - Project

A project is defined as the “whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:

- (1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100–65700.”

State CEQA Guideline § 15360 - Environment

To evaluate the potential impact on the environment, a CEQA document must describe the existing environmental conditions as they exist on the ground in order to enable a comparison to what will exist upon project implementation and ultimate operation. The area involved is where significant direct or indirect impacts would occur as a result of the project. The environment includes both natural and man-made (artificial) conditions. State CEQA Guidelines defines the environment as, the physical conditions that exist in the area and which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historical or aesthetic significance.

State CEQA Guideline § 15382 - Significant Effect on the Environment

Based on the existing conditions and the changes that would occur, a disclosure in the EIR is required if an impact would be characterized as a Significant Effect (Impact) on the Environment. A Significant Effect on the Environment is defined as a substantial, or potentially substantial, adverse change in any of the physical conditions in the area affected by a proposed project, including land, air, water, minerals, flora, fauna, ambient noise, tribal resources, and objects of historical or aesthetic significance. An economic or social change by itself is not considered a significant impact on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.

To further refine the description and level of an impact, and EIR will typically uses a variety of terms to describe the level of significance of adverse impacts. The terms used in this EIR are defined as follows:

- **Less Than Significant.** An impact that is adverse but that does not exceed the defined thresholds of significance. Less than significant impacts do not require mitigation.
- **Significant.** An impact that exceeds the defined thresholds of significance and would or could cause a substantial adverse change in the environment. Mitigation measures are recommended when feasible, to eliminate the impact or reduce it to a less than significant level.

- Significant and Unavoidable. An impact that exceeds the defined thresholds of significance and cannot be eliminated or reduced to a less than significant level even with the implementation of mitigation measures.
- Cumulative Impacts. Two or more individual impacts that, when considered together, are considerable or that compound or increase other environmental impacts. The following statements also apply when considering cumulative impacts:
 - The individual impacts may be changes resulting from a single project or separate projects.
 - The cumulative impact from several projects is the change in the environment that results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over time.

State CEQA Guideline § 15064 (d)(1), (2) and (3)

Impacts can either be direct or indirect. A direct impact is one that will occur as an immediate result of project implementation such as from ground disturbing activities, emissions from vehicles used during construction, or visible change to the visual environment on a site that are immediately noticeable both during and after construction. An indirect impact is one that occurs at a later date or that a project would enable or induce by its presence or adoption. The explanation and specific nature of these impacts are particularly important to the proposed project as most, if not all, impacts are anticipated to be indirect. Based on State CEQA Guidelines these two types of impacts are described in detail below.

- (1) A direct physical change in the environment is a physical change in the environment which is caused by and immediately related to the project. Examples of direct physical changes in the environment are the dust, noise, and traffic of heavy equipment that would result from construction of a sewage treatment plant and possible odor from operation of the plant.

In the case of the proposed project, however, there are no specific improvements or site-specific development plans that are proposed or that would be permitted by adoption of the SOI update. Therefore, as described above, while the proposed project would not directly result in any construction activities, the proposed could result in indirect impacts by facilitating future development. An indirect impact is defined by State CEQA Guideline § 15064 (d)(2) and (3) which states:

- (2) An indirect physical change in the environment is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment. For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution.
- (3) An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable.

The proposed project is for a SOI approval and it is categorized as an action that would culminate in either direct or indirect physical changes to the environment. Hence, the proposed project is subject to CEQA in this regard. Because the SOI Plan update is an irrevocable step (barring additional revisions or amendments) it would likely result in some, although yet unknown later action(s) resulting in an associated future impact(s) from those actions what would be considered indirect or secondary. Within this EIR, the impacts are discussed based on the best information available. Accordingly, the proposed SOI Plan update would influence the future growth and development of Nevada City by promoting development because it is a major policy that will affect land use decisions. Based on CEQA requirements, the intent of this EIR is to review at an appropriate level of analysis the direct and indirect environmental impacts associated with the potential extension of agency services to areas within the recommended SOI and in *Section 6.0 Alternatives*.

15126.4 Mitigation Measures Proposed to Minimize Significant Effects

An EIR is required to describe mitigation measures that are feasible and that could reduce adverse impacts. The requirements for and situations in which mitigation is included to an EIR is discussed as follows:

(a) Mitigation Measures in General.

- (1) An EIR shall describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy.
 - (A) The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures proposed by the lead, responsible or trustee agency or other persons which are not included but the lead agency determines could reasonably be expected to reduce adverse impacts if required as conditions of approving the project. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR.
 - (B) Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.
 - (C) Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant.
 - (D) If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed. (Stevens v. City of Glendale (1981) 125 Cal.App.3d 986.)

- (2) Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments. In the case of the adoption of a plan, policy, regulation, or other public project, mitigation measures can be incorporated into the plan, policy, regulation, or project design.
- (3) Mitigation measures are not required for effects which are not found to be significant.
- (4) Mitigation measures must be consistent with all applicable constitutional requirements, including the following:

State CEQA Guideline §15370 - Mitigation

As discussed above, mitigation consists of measures that avoid or substantially reduce a proposed project's significant environmental impacts. Mitigation measures are described in five categories and can reduce impacts in the following ways:

- Avoiding the impact altogether by not taking a certain action or parts of an action;
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
- Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; or
- Compensating for the impact by replacing or providing substitute resources or environments.

State CEQA Guideline §15146 – Degree of Specificity

The EIR analyzes the environmental effects of the proposed project to the degree of specificity appropriate to the current proposed action as required by §15146 of the State CEQA Guidelines. The analysis considers the actions associated with the proposed project to determine the short-term and long-term effects associated with adoption of the proposed project. The proposed project does not include any component that, if the SOI is adopted, would directly result in construction or operation of any physical element that would directly affect the environment. Therefore, the proposed project focuses on indirect impacts that could result or be facilitated after project approval. Where appropriate and where within the authority of LAFCo, the EIR proposed measures to mitigate potentially significant impacts. Those impacts that cannot be mitigated to less than significant levels are also identified.

To provide clarity on the difference between direct and indirect impacts and description of specificity, State CEQA Guideline §15146 is cited below [the reader is directed to (b), which is descriptive of the types of impacts that would occur from adoption of the proposed project:

The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.

- (a) An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local

general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy.

- (b) An EIR on a project such as the adoption or amendment of a comprehensive zoning ordinance or a local general plan should focus on the secondary effects that can be expected to follow from the adoption or amendment, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow.

State CEQA Guideline §15162 and 15168

LAFCo has determined that for the environmental analysis for this project, a Program EIR under CEQA will provide the most appropriate level of detail. Section 21166 of the CEQA Statutes, and State CEQA Guideline § 15162 and §15168 set forth the standards of a Program EIR. A Program EIR is generally used for projects that will result in the issuance of rules and regulations that are likely to result in a series of linked, logical actions. These actions are typically related geographically, likely to have comparable environmental effects, and if needed, are able to be mitigated through the implementation of standard measures. Similar to a Project Level EIR, the Program EIR still evaluates the proposed project and considers the environmental effects. However, because a site-specific development proposal is generally not available at this time, a sufficient level of detail about future potential projects that could occur within the SOI Plan update area are not known. Therefore, a Program EIR is the most appropriate CEQA document for the potential future series of secondary actions and effects.

Program EIR

This EIR is being prepared as a Program EIR in accordance with Section 15168 of the CEQA Guidelines, which states the following:

- a) *General. A Program EIR is an EIR, which may be prepared on a series of actions that can be characterized as one large project and are related either:*
 - 1) *Geographically,*
 - 2) *As logical parts in the chain of contemplated actions,*
 - 3) *In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or*
 - 4) *As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways.*
- b) *Advantages. Use of a Program EIR can provide the following advantages. The Program EIR can:*
 - 1) *Provide an occasion for a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action,*

- 2) *Ensure consideration of cumulative impacts that might be slighted in a case-by-case analysis,*
 - 3) *Avoid duplicative reconsideration of basic policy considerations,*
 - 4) *Allow the Lead Agency to consider broad policy alternatives and program-wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts, and*
 - 5) *Allow reduction in paperwork.*
- c) *Use with Later Activities. Subsequent activities in the program must be examined in the light of the Program EIR to determine whether an additional environmental document must be prepared.*
- 1) *If a later activity would have effects that were not examined in the program EIR, a new Initial Study would need to be prepared leading to either an EIR or a Negative Declaration.*
 - 2) *If the agency finds that pursuant to Section 15162, no new effects could occur, or no new mitigation measures would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required.*
 - 3) *An agency shall incorporate feasible mitigation measures and alternatives developed in the program EIR into subsequent actions in the program.*
 - 4) *Where the subsequent activities involve site-specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were covered in the program EIR.*
 - 5) *A program EIR will be most helpful in dealing with subsequent activities if it deals with the effects of the program as specifically and comprehensively as possible. With a good and detailed analysis of the program, many subsequent activities could be found to be within the scope of the project described in the program EIR, and no further environmental documents would be required.*

Based on the State CEQA Guidelines related to the Program EIR, this is the type of CEQA document that is being used for the SOI Plan update. Based on the nature of the scope and scale of the proposed project all information that would be required for completion of project-specific CEQA evaluations is not known. Therefore, in accordance with CEQA requirements the PEIR discusses the environmental effects in sufficient detail based on the information currently known and to be used by future projects when applicable.

State CEQA Guideline §15152 - Tiering

- (a) “Tiering” refers to using the analysis of general matters contained in a broader EIR (such as one prepared for a general plan or policy statement) with later EIRs and negative declarations on narrower projects; incorporating by reference the general discussions from the broader EIR; and concentrating the later EIR or negative declaration solely on the issues specific to the later project.

Although the strategy of tiering can occur using other types of EIRs, a Program EIR is more commonly used for this purpose. State CEQA Guideline §15152(b) encourages agencies to tier environmental analysis for separate but related projects so that repetitive discussions can be reduced. However, this does not excuse an agency from reasonably analyzing foreseeable effects and use of the Program EIR for tiering does not justify deferral of analysis. Additionally, CEQA provides that the level of detail in a first-tier EIR need not be greater than that of the program, plan policy, or ordinance being analyzed.

It should be noted that while this EIR is intended to be tiered from, if specific information is known about particular development sites or specific information is known about potential future projects those elements are sufficiently discussed in this EIR. In other situations, when specific information is not known, the EIR discusses the information and impacts at an appropriate level of detail and notes that future analysis will be provided in a future environmental document when the full details of that project are known. Accordingly, this EIR evaluates the potential environmental impacts of the SOI Plan update at the level of detail allowed by the plan and known projects.

State CEQA Guideline § 15152 (c) provides that because site-specific information may not feasibly be known, discussion of that information may be deferred. In many instances, this will be until such time as the lead agency prepares a future environmental document in connection with a project of more limited geographical scale. This can occur as long as deferral does not prevent adequate identification of significant effects of the planning approval at hand. There are two discussion points regarding this matter.

First, although LAFCo is the lead agency for the SOI Plan update, it is anticipated that the City will be the lead agency on most future projects within the SOI. On future projects, the City, or other future lead agency (such as a utility district), would be able to utilize this EIR, as appropriate, as a first-level document and tier from it. Simply stated, if a future lead agency for a related project can use information, analysis, or mitigation from this document to reduce redundant disclosures - they may do so.

Second, where adequate information exists to fully explore potential impacts on a particular site, this EIR identifies those impacts. In other instances, where specific information is not known, and it would be speculative and require guesswork to define a project and potential impacts, this EIR appropriately defers the discussion to a future time when those facts are known. In accordance with CEQA requirements, this will not excuse a future project or action from being fully analyzed, future impacts from being fully disclosed, and appropriate mitigation being incorporated. Accordingly, if a subsequent activity would have effects not within the scope of this EIR, the lead agency must prepare a new Initial Study leading to a Negative Declaration, Mitigated Negative Declaration, or project level EIR. In these instances, the EIR may still serve a valuable purpose as the first-tier environmental analysis.

State CEQA Guideline §15125 – Environmental Setting

- (a) An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives

For the purpose of the proposed project, the environmental setting may be presented differently depending on a site-specific resource and how the 17 listed resources differ. For example, the environmental setting for air quality generally encompass a large area because the existing conditions are typically defined by the air quality within an overall air basin, which will usually have a much larger footprint than a project. In comparison, impacts related to aesthetics are generally related site-specific and deal with the visual changes that would occur within the project site itself.

Baseline

The existing environmental setting of the project site will typically be considered the baseline physical conditions which the lead agency will use to determine if changes that would occur from a project would result in an impact to the environment. Therefore, as required by CEQA Guidelines § 15125(a), the baseline for the environmental analysis is the present physical environment and development as they exist on the ground within the area of the SOI recommended by LAFCo.

In developing such analysis, it may generally be assumed that the level of development facilitated by the extension of services will be consistent with that allowed under the Nevada City General Plan (NCGP) currently in effect. As simple as this may appear, there are different ways to interpret the State CEQA Guidelines related to establishing the baseline. Generally, for a project that proposes a development or for a plan for an area where no plan exists it is very reasonable to use the existing conditions as they exist on the ground and evaluate impacts based on what would happen when that plan is initiated. However, for the proposed project this typical procedure is not applicable. The proposed project is for a SOI Plan update which neither proposes any construction resulting in direct impacts, nor is it a plan that would authorize development.

Thus, even if an undeveloped area has been included in an agency's SOI for many years, if the general plan would allow substantial development and the services provided by the agency is necessary for that development, the environmental analysis must consider the foreseeable impacts of that development on the environment. This requires that the environmental analysis of a SOI must use as its baseline the existing conditions "on the ground," not what the prior SOI or applicable general plan permits.

Accordingly, it is allowable for an agency such as LAFCo to rely on previous EIR's for information to include in a SOI EIR provided the information is still current. However, Public Resources Code 21094(b) specifically requires that the agency proposing to rely upon a prior EIR for a later project must do an initial study first

to determine whether the prior EIR meets CEQA's requirements for use with the later project. The agency may only rely upon the prior EIR if its study determines that all of the following are true:

- (1) The later project is consistent with the program, plan, policy, or ordinance for which an environmental impact report has been prepared,
- (2) The later project is consistent with applicable local land use plans and zoning of the city, county, or city and county in which the later project would be located, and
- (3) The circumstances under which a supplemental EIR would be required under PRC §21166 do not exist. Section 21166 in turn specifies three grounds for requiring a supplemental EIR to supplement an existing EIR. Those grounds are:
 - (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report,
 - (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report, or
 - (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

The most common problems in using a prior EIR for a SOI update is that the EIR was completed for an area different than that proposed for the SOI and that the EIR is out of date. If the EIR is out of date, it increases the probability that either the circumstances surrounding the project have changed or that new information becomes available that requires new evaluation. For example, a common problem today is that prior EIR's often did not consider GHG emissions and the change in legal requirements is either a "change in circumstances surrounding the project" or "new information" that requires a supplemental environmental document.

Even if the EIR being relied upon is reasonably current, and otherwise does not require supplementation under §21166, use of the prior EIR does not necessarily avoid doing a new or supplemental EIR for a SOI update. If the county or city general plan being relied upon for the SOI update made findings of unavoidable significant impacts remaining after mitigation, then any environmental document tiered off or relying upon that EIR must make similar findings. If a LAFCo, acting as lead agency, wants to rely upon such a city or county general plan EIR that does contain significant and unavoidable environmental impacts, then it must likewise adopt the overriding findings. Under CEQA that can only be done in the context of an EIR or Supplemental EIR.

This EIR will use information from previous environmental documents where appropriate. However, because the existing environmental documentation for the previous SOI is limited and not current, this EIR will not rely upon those previous environmental documents as a substitute for addressing the issues in this EIR t

This DEIR follows CEQA Guideline Section 15125 and analyzes the environmental impacts of the SOI Plan update against a baseline of the existing physical conditions as they exist on the ground at the time the

NOP was published. Accordingly, this DEIR compares the current conditions and level of development with what would foreseeably occur if the area is annexed and City zoning and services are expanded into an area as allowed by the new SOI. It does not use as a baseline the level of development allowed under the existing NCGP or the Nevada County General Plan (County General Plan) nor does it speculate as to impact of possible rezoning to higher density.

State CEQA Guideline §15145 - Speculation

State CEQA Guideline Addresses Speculation in §15145. The guidelines state, “If, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.”

What is too speculative to address is particularly salient to understand for the purposes of this proposed project. The project plans for the long-term development of the City. As with any long-term planning, it is likely that circumstances will arise after the SOI Plan update is adopted that result in development different than what is planned. However, trying to predict such changes and address the environmental impacts of such possible changes in this document would be extremely problematic and “speculative.” Consequently, this EIR assumes that future development will occur consistent with the present City General Plan and zoning and focuses on the indirect environmental impacts that would result from such annexation and development.

1.5 REPORT ORGANIZATION

The Draft EIR is organized into eight sections, as follows:

- Section 1.0, INTRODUCTION AND PURPOSE, provides an introduction and overview describing the intended use of the Draft EIR and the review and certification process. It also provides summaries of the chapters included in the EIR, and summaries of the issues and concerns received from the public and public agencies during the NOP review period.
- Section 2.0, EXECUTIVE SUMMARY, summarizes the elements of the proposed project and the environmental impacts that would result from implementation of the proposed project, describes proposed mitigation measures, and indicates the level of significance of impacts after mitigation. Acknowledges alternatives that would reduce or avoid significant impacts.
- Section 3.0, PROJECT DESCRIPTION, provides a detailed description of the proposed project, including the project’s location, background information, major objectives, and technical characteristics.
- Section 4.0, DESCRIPTION OF ENVIRONMENTAL SETTING (Impacts and Mitigation Measures), contains a detailed environmental analysis of the existing conditions, proposed project impacts, recommended mitigation measures, and unavoidable adverse impacts (if applicable). The analysis of each environmental category in Section 4.0 is organized as follows:

o Environmental Setting -

- “Regulatory Setting” described the Federal, State, and Local agencies and policy and regulatory documents that are applicable to the proposed project.
 - “Standards of Significance” provides the thresholds that are the basis of conclusions of significance, for which the primary source for the criteria is Appendix G of the State CEQA Guidelines (California Code of Regulations [CCR], §15000 through §15387). LAFCo has not adopted any local thresholds of significance,
 - “Project Impacts and Mitigation” describes potential environmental changes (no impact, less than significant impact, less than significant impact with mitigation incorporated, or significant and unavoidable impact) to the existing physical conditions that may occur if the proposed project is implemented.
 - “Level of Significance After Mitigation” discusses whether the proposed project and the project’s contribution to cumulative impacts can be reduced to levels that are considered less than significant.
 - “Conclusion” provides a summary of the anticipated project impacts and mitigation including significance conclusion.
 - “Cumulative Impacts” describes potential environmental changes to the existing physical conditions that may occur with the proposed project, together with all other reasonably foreseeable, planned, and approved future projects.
- Section 5.0, GROWTH-INDUCING IMPACTS, discusses significant environmental changes that would result from the proposed action, should it be implemented, and discusses growth-inducing impacts of the proposed project.
 - Section 6.0, Alternatives to the proposed project, describes a reasonable range of alternatives to the proposed project or to the location of the project that could feasibly attain the basic project objectives, and provides and a determination of the environmentally superior alternative.
 - Section 7.0, AGENCY CONTACTS AND PREPARERS lists persons from the Lead Agency and preparers of the EIR.

1.6 INCORPORATION BY REFERENCE

As permitted in Section 15150 of the CEQA Guidelines, an EIR may reference all or portions of another document that is a matter of public record or is generally available to the public. Information from the documents that have been incorporated by reference has been briefly summarized in the appropriate sections of this EIR, along with a description of how the public may obtain and review these documents.

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