

PLACER LOCAL AGENCY FORMATION COMMISSION

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

REGULAR HEARING AGENDA August 13, 2014--4:00 p.m. Board of Supervisors' Chambers County Administrative Building 175 Fulweiler Avenue, Auburn, CA 95603

- 1. Flag Salute**
- 2. Call to Order and Roll Call**
- 3. Approval of Agenda** (Action item)
- 4. Public Comment:** This is the time when persons may address the Commission on items not on the agenda. Please limit comments to three (3) minutes as the Commission is not permitted to take any action on items presented as public comment.
- 5. Approval of Minutes:** From the July 9 11, 2014 hearing. (Action Item, Pg. 2)
- 6. Presentation of the Draft Municipal Service Review for Northstar Community Services District and Placer County Water Agency.** A Presentation of the Draft Municipal Service review will be made to the Commission. No action will be taken at this hearing.
- 7. Olympic Valley Incorporation proposal:**
 - a. Discuss options regarding alleged conflict of interest with the selected Comprehensive Fiscal Analysis Consultant, and provide direction to staff
 - b. receive attached correspondence
- 8. Executive Officer Reports:**
 - Legislative Committee
 - Proposal Status
 - Status of Municipal Service Reviews
 - CALAFCO Achievement Award Nominations
 - CALAFCO Conference, October 15 -17, 2014, Ontario
 - Upcoming Hearing Dates, recommend holding September 8th meeting in Tahoe area
- 9. Closed Session:** Closed Session pursuant to Government Code Section 54957 to consider Public employee performance evaluation
- 10. Commissioner Reports:**
- 11. Adjournment:**

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

PLACER LOCAL AGENCY FORMATION COMMISSION

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

**MINUTES
July 9, 2014**

1. Flag Salute led by Commissioner Rudd.
2. Call to Order and Roll Call: Chairman Weygandt called the hearing to order at 4:00 p.m. Commissioners present and seated: Allen, Treabess, Rudd, Holmes, Ucovich, Kirby, and Weygandt. Staff present: Executive Officer Kris Berry, LAFCO Counsel Bill Wright, and Commission Clerk Linda Wilkie.
3. Approval of Agenda: The agenda was approved as submitted by motion: Rudd/Holmes/7:0
4. Public Comment: Dr. Fred Ifeld stated, regarding the incorporation of Squaw Valley, that he thought LAFCO Counsel had stated previously that property owners could opt out of the incorporation.
5. Approval of Minutes from the June 11, 2014 hearing. The minutes were approved as submitted by motion: Holmes/Ucovich/5:2 (Kirby & Weygandt abstained)
6. Consider Request for phased payment: The Commission was asked to consider a request from Incorporate Olympic Valley to allow a phased payment schedule for the preparation of the Comprehensive Fiscal Analysis: Commission Treabess recused himself. Staff recommended that the Commission require full payment prior to LAFCO executing the contract for the preparation of the Comprehensive Fiscal Analysis.

After Commission discussion, Chairman Weygandt opened to the public:

- Kathryn Rees, representing the Squaw Valley Lodge Homeowners Association containing 218 units, wished to go on the record that they requested to be excluded from the incorporation and felt that the project is extremely underfunded.
- Dr. Fred Ifeld, Chairman of the Board for Incorporate Olympic Valley, reminded everyone that owners of property in the proposal area could register to vote, therefore having a say in the incorporation.
- David Ruderman, representing Colantuono Highsmith & Whatley stated that the Incorporate Olympic Valley proponents do not want LAFCO to be on the hook for Citygate fees. He said he would be willing to help LAFCO staff set up a payment schedule.

Emails received and distributed to the Commissioners:

- 2 letters from Dr. Fred Ifeld regarding a payment schedule
- a letter from Mike Syiek, President, Board of Directors of Squaw Valley Lodge Owners Association to re-iterate the request to be excluded from the incorporation.

After more Commission discussion, the Commission agreed to require full payment from the Incorporate Olympic Valley prior to LAFCO executing the contract for the preparation of the Comprehensive Fiscal Analysis by motion: Allen/Holmes/6:1 (Treabess recused himself for this agenda item)

7. Executive Officer Reports:
 - Legislative Committee: updates handed to Commissioners
 - Proposal Status: updated
 - Status of Town of Olympic Valley proposal
 - Status of Municipal Service Reviews: updated
 - Results of Special District Representative election: Ron Treabess was re-elected
 - CALAFCO Achievement Award Nominations: Forms on line at the CALAFCO site.
 - CALAFCO Conference, October 15 -17, 2014, Ontario
 - Upcoming Hearing Dates: August 13, 2014
8. Closed Session: Closed Session pursuant to Government Code Section 54957 to consider Public employee performance evaluation: No report on closed session.
9. Commissioner Reports: None
10. Adjournment: Chairman Weygandt adjourned the hearing at 4:45 p.m.

Linda Wilkie, Clerk to the Commission

August 13, 2014
Item No. 6

**PLACER COUNTY
LOCAL AGENCY FORMATION COMMISSION**

110 Maple Street, Auburn California 95603

530-889-4097

Email: lafco@placer.ca.gov

STAFF REPORT

DATE: August 6, 2014

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

FROM: Kris Berry, AICP, Executive Officer



SUBJECT: Presentation of the Draft Municipal Service Review for Northstar Community Services District and Placer County Water Agency

SUMMARY:

A Draft Municipal Service Review for both Northstar Community Services District and Placer County Water Agency (PCWA, Tahoe Area) has been prepared. These two districts are part of the overall Tahoe area Municipal Service Report. These will be utilized by Placer LAFCO for consideration in determining each agencies sphere of influence.

This Municipal Service Reviews have been prepared under contract by SWALE Consulting, and will be forwarded to you under separate cover. A presentation of the Draft Municipal Service Review will be given at the Commission meeting.

This is a presentation of the findings of the reports. No actions approving or denying the study will be taken at this meeting. The Final Municipal Service Review will be considered by the Commission at a later date. Staff will be available to answer questions and receive comments and recommendations you may have related to the study.

**PLACER COUNTY
LOCAL AGENCY FORMATION COMMISSION**

110 Maple Street, Auburn California 95603

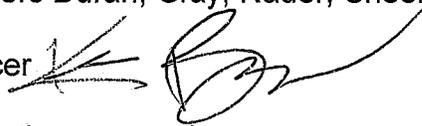
530-889-4097

Email: lafco@placer.ca.gov

STAFF REPORT

DATE: August 6, 2014

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

FROM: Kris Berry, AICP, Executive Officer 

SUBJECT: Town of Olympic Valley Incorporation proposal
a) Options regarding alleged conflict of interest with Citygate Associates;
b) Receive attached correspondence

RECOMMENDATION:

- 1) It is recommended that the Commission receive this report and direct staff to 1) execute Contracts with Citygate Associate, LLC and 2) select and retain a consultant to provide independent peer review of the Comprehensive Fiscal Analysis.
- 2) Recommended that the Commission receive the attached correspondence received since the July 9, 2014 Commission meeting.

SUMMARY:

ITEM A:

Recently at a Public Hearing before the Squaw Valley Public Service District, a member of the public raised concerns regarding Placer LAFCO retaining Citygate Associates, LLC for the preparation of the Comprehensive Fiscal Analysis for the Incorporation proposal for the Town of Olympic Valley and potential conflict of interest.

These concerns were transmitted by Brian Sheehan, a Director of the Squaw Valley Public Service District via the letter attached as Exhibit "A-1" of July 31, 2014. A response by LAFCO counsel William Wright, outlining several options the Commission may take, is attached as Exhibit "A-2." As pointed out in Mr. Wright's memo, although draft contracts have been prepared, the contract has not been executed. Staff does not believe there is a conflict of interest in this matter. However, since the issue has been raised, we are recommending that we proceed with the execution of the contract with Citygate Associates LLC and

additionally we are recommending that we retain the services of an independent consultant to offer peer review of the CFA during the Draft and Final stages of preparation.

ITEM B:

Letters received since the July 9, 2014 hearing are included in the attached Exhibit "B."

Attachments:

- Exhibit A-1 July 31, 2014 Letter from Brian Sheehan
- Exhibit A-2 August 6, 2014 Memo from LAFCO Counsel William Wright

- Exhibit B-1 July 14, 2014 Letter from Whitman Manley
- Exhibit B-2 June 27, 2014 (rec Aug 1, 2014) letter from Dean and Sandra Hall
- Exhibit B-3 August 5, 2014 letter from Sean Welch

EXHIBIT A

EXHIBIT A-1

PO Box 2552
Olympic Valley, CA 96146
31 July 2014

Kristina Berry, Executive Officer
Placer County LAFCO
110 Maple Street
Auburn, CA 95603

CC: LAFCO Counsel, Mr. William Wright

Re: LAFCO/ Citygate/IOV Contract

Dear Kris:

The Squaw Valley Public Service District held its most recent monthly Board meeting this past Tuesday July 29, 2014.

Among those attending this public meeting were Mr. Chevis Hosea of Squaw Valley Real Estate (KSL) and Dr. Fred Ilfeld of IOV.

Public questions regarding the contractual consultancy with Citygate by SVPSD and possible conflict of interest issues with IOV came up primarily from Chevis Hosea. Chief Pete Bansen said that he was working with Citygate experts to define the potential impacts on the Fire Department and Emergency Response teams (EMT) from the build out of the KSL proposed development within Squaw Valley. The expense of this SVPSD contract with Citygate is being paid by KSL. Chief Bansen said he saw no conflict of interest issues with Citygate doing both the Fire Department issues and the Citygate also doing the Comprehensive Fiscal Analysis of the proposed IOV under contract with LAFCO of Placer County. He stated that Citygate is a large firm with totally separate staff. doing these two studies. However, the perception for conflict of interest issues is here and was picked up by public attendees. As Chief Bansen stated, SVPSD was there first and executed their contract with Citygate months ago.

I have serious concerns that LAFCO recently agreed to contract with Citygate to review and assess the proposed financial segment of the IOV activity to incorporate the Village of Squaw Valley. I suspect there is a strong possibility that this Citygate Comprehensive Fiscal Analysis could be tossed out wasting 6 to 9 months of Citygate work on the basis of "conflict of interest" from either of the competing sides, KSL or IOV. If not tossed out, the issue could be tied up in litigation for a good six months after perhaps 6 to 9 months of Citygate assessment work. Depending on who is favored in the Citygate report the other side will contest it on the basis of "conflict of interest". If IOV sees its paid for analysis tossed out on this basis, it will want its \$51K back. This is a lot of money from the annual LAFCO budget. IOV did not award the contract to Citygate, LAFCO did but IOV is paying for it,

I just foresee in a few months huge amounts of related litigation that no one but KSL can afford. The IOV will see its taking the incorporation issue to the voters dragged out for another year, perhaps fatally for the incorporation issue.

My Recommendation: Do not sign the contract with Citygate when the IOV money is received. This whole thing could and will blow up by next spring. Find another consulting group to do the project. I know Citygate was the only firm available. Then put your RFP net out further and more aggressively. No contract is better than what we are about to have. It is not worth the risk financially and schedule wise. Only the lawyers will win.

I personally have no opinion of the pros and cons of incorporation. I just want that decision to be made by the voters of Squaw Valley and not by those with deepest pockets.

Brian T. Sheehan, PhD, PE
Squaw Valley Resident
brian_sheehan@comcast.net office 650/344-9671

THE WRIGHT LAW OFFICE

Attorneys at Law

2828 Easy Street, Suite 3
Placerville, California 95667

William M. Wright
billofwrights@sbcglobal.net

Carol L. Fallon
clfallon@sbcglobal.net

Voice: (530) 344 - 8096

Fax: (530) 344 - 8098

MEMORANDUM

TO: Placer LAFCO Commissioners
FROM: William M. Wright
DATE: August 6, 2014
RE: Potential Conflict of Interest / Citygate / Olympic Valley incorporation

Preparation of the comprehensive fiscal analysis (CFA) is a critical step in the Incorporate Olympic Valley (IOV) application process. Placer LAFCO staff has twice sent out Requests for Proposals to obtain a consultant to perform the CFA. Both times, the response was disappointingly small. Citygate Associates was the only respondent to the first Request for Proposal (RFP) and the second RFP had just three respondents, one of which subsequently withdrew its proposal. The Commission eventually agreed to contract with Citygate for the CFA. The contract has not yet been executed.

Citygate is currently under contract with the Squaw Valley Public Service District (SVPSD) for a financial analysis regarding mitigation measures to provide funding for fire protection services that would be required under the Squaw Valley Village Project, for which the County of Placer is the lead agency for planning and CEQA review. LAFCO's consideration of the IOV application is independent of Placer County's planning process for the Village Project. The information Citygate is analyzing for the SVPSD is unrelated to the information it would analyze for the CFA, as the analysis for the CFA will only consider current land use and service levels, with one possible alternative. The IOV application does not propose any change to services that the SVPSD would provide to the territory within the proposed city.

At the last meeting of the SVPSD, a representative of the Village Project raised the issue of a possible conflict due to Citygate performing work for both LAFCO and the SVPSD. The SVPSD has not taken a position on this issue, nor is it objecting to or challenging the execution of the agreement between LAFCO and Citygate, based upon an actual or perceived conflict. We have analyzed the work to be performed under the two contracts and do not believe there is a legal conflict.

However, since the issue has been raised it is appropriate for the Commission to make the final determination on this matter. Because the contract with Citygate has not been finalized or executed, LAFCO has the option of issuing a third RFP in hopes of locating a different qualified consultant to prepare the CFA.

Another option is to continue with Citygate and to provide for a peer review of the CFA. This will avoid delays associated with issuing a third RFP while still providing an independent review of the work.

Please call if you have any questions.

WMW:cf

EXHIBIT B



REMY | MOOSE | MANLEY
LLP

Whitman F. Manley
wmanley@rmmenvirolaw.com

July 14, 2014

VIA ELECTRONIC & REGULAR MAIL

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

Re: CEQA Compliance - Olympic Valley Incorporation Proposal (LAFCO #2013-02)

Dear Ms. Berry:

We submit this letter on behalf of our client Squaw Valley Ski Holdings, LLC ("Squaw Valley"), following up on our letters of April 4, 2014, and May 9, 2014, regarding the need for Placer County LAFCO to require preparation of an environmental impact report ("EIR"), rather than a negative declaration or mitigated negative declaration ("MND"), under the California Environmental Quality Act (Pub. Resources Code, § 21000, et seq.) ("CEQA") for the Olympic Valley Incorporation Proposal ("IOV Proposal").

Substantial evidence already exists in the record supporting a "fair argument" that the IOV Proposal "may have" a potentially significant adverse effect on the environment. (See Exhibit B (EPS Memo) to letter from Whit Manley (April 4, 2014).) LAFCO is therefore required to prepare an EIR that is comprehensive and thoroughly analyzes all of the reasonably foreseeable and potentially significant adverse direct, indirect and cumulative environmental impacts that may result from the IOV Proposal. Failure to prepare an EIR would present a considerable litigation risk for Placer County LAFCO, one which could result in substantial attorneys' fees and costs to IOV and LAFCO should respondents lose on the merits.

I. Placer County LAFCO must prepare and certify an adequate EIR before it considers the IOV Proposal.

As explained in our prior letters, CEQA establishes a very low threshold for requiring preparation of an EIR. Public agencies must prepare an EIR, rather than a Negative Declaration or a Mitigated Negative Declaration (MND), if substantial evidence supports a *fair argument* that

a proposed project *may* have a significant effect¹ on the environment. (Pub. Resources Code, §§ 21080, subd. (d), 21082.2, subd. (d); CEQA Guidelines, § 15064, subd. (f).)

Such evidence has been found to include expert testimony from an environmental planner that a proposed incorporation would result in potentially significant adverse impacts from a change in land use policies, similar to the evidence regarding wildfire and transit impacts already contained within Placer County LAFCO's record today. (See *Sacramento County Bd. of Supervisors v. Sacramento Local Agency Formation Com.* (1991) 6 Cal.App.4th 475, 286 Cal.Rptr.171 [requiring Sacramento County LAFCO to rescind adoption of a negative declaration and prepare an EIR for proposed incorporation of the City of Citrus Heights]; review granted and opinion superseded on other grounds at 3 Cal.4th 903 (1992).)

The courts have required lead agencies to prepare EIRs for other projects that have been portrayed as environmentally benign. (See *City of Livermore v. Local Agency Formation Com.* (1986) 184 Cal.App.3d 531, 537 [EIR required for change in LAFCO Guidelines for determining spheres of influence for cities]; *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1194 [EIR required for revised state beach general plan due to potentially significant effects of allowing unleashed dogs on the environment]; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903 (*Pocket Protectors*) [invalidating MND and requiring preparation of an EIR for residential infill project based on lay testimony of potentially significant aesthetic impacts]; *Citizens for Responsible and Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323 [invalidating MND and requiring EIR for a senior residential care facility based on "expert testimony" of 30-year HVAC employee claiming potentially significant noise impacts from the project's proposed type of air conditioning units].)

"It is the function of an EIR, not a negative declaration, to resolve conflicting claims, based on substantial evidence, as to the environmental effects of a project." (*Pocket Protectors, supra*, 124 Cal.App.4th at p. 935, citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 85.) If, as here, a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency must prepare an EIR even though it may

^{1/} Public Resources Code section 21068 defines a "[s]ignificant effect on the environment" as "a substantial, or *potentially substantial*, adverse change in the environment." (Pub. Resources Code, § 21068 (emphasis added).) CEQA Guidelines section 15382 further defines a "significant effect" as "a substantial, or *potentially substantial*, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic and aesthetic significance."

also be presented with other substantial evidence that the project will not have a significant effect. (CEQA Guidelines, § 15064, subd. (f); see also *Pocket Protectors*, *supra*, 124 Cal.App.4th at pp. 927-928.)

Again, “[t]he fair argument standard is a ‘low threshold’ test for requiring the preparation of an EIR. [Citation.] It is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency’s determination. Review is de novo, *with a preference for resolving doubts in favor of environmental review*. [Citation.]” (*Pocket Protectors*, *supra*, 124 Cal.App.4th at p. 928, italics original; see also *County Sanitation Dist. No. 2 of Los Angeles County v. County of Kern* (2005) 127 Cal.App.4th 1544, 1579 [“California courts . . . routinely describe the fair argument test as a low threshold requirement for the initial preparation of an EIR that reflects a preference for resolving doubts in favor of environmental review.”].)

As the California Supreme Court has repeatedly recognized, “the EIR is the heart of CEQA.” (*Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) “An EIR is an ‘environmental “alarm bell” whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.’ [Citation.] The EIR is also intended ‘to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.’ [Citations.] Because the EIR must be certified or rejected by public officials, it is a document of accountability. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. [Citations.] The EIR process protects not only the environment but also informed self-government.” (*Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1446, quoting *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392.)

Our prior letters and attachments submitted with those letters, including the Economic Planning Systems (“EPS”) memorandum, contain facts, and reasonable assumptions predicated on facts, and are therefore substantial evidence in support of a fair argument that the IOV proposal may have a significant impact on several resources. Specifically, the letters provide substantial evidence that the IOV Proposal may result in significant impacts caused by changes in public services, particularly fire protection and transportation. Evidence demonstrating a fair argument of even one potential impact triggers the need for an EIR. Accordingly, LAFCO must prepare an EIR.

II. To fulfill the requirements of CEQA, the scope of the EIR for the IOV Proposal must be broad.

According to CEQA Guidelines Section 15121, “[a]n EIR is an informational document which will inform public agency decision-makers and the public generally of the potential environmental impacts of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project.” An EIR is required to “identify and focus on the significant environmental effects of the proposed project.” (CEQA Guidelines, § 15126.2.) Direct and indirect significant effects of the project must be clearly identified and described, giving due consideration to both the short-term and long-term effects. (*Ibid.*)

Based on our review of the IOV Proposal, and EIRs prepared by LAFCO’s for similar incorporation projects,² the EIR for the IOV Proposal should evaluate, at a minimum, potential impacts to the following resource areas as set forth in Appendix G of the CEQA Guidelines:

- Air Quality
- Hazardous and Hazardous Materials
- Noise
- Public Services and Recreation
- Hydrology and Water Quality
- Utilities and Service Systems
- Biological Resources
- Land Use and Planning
- Population and Housing
- Forestry Resources
- Greenhouse Gas Emissions
- Transportation

The EIR must also include a discussion of potential growth inducing impacts under CEQA Guidelines Section 15126.2, subdivision (d), and a thorough analysis of potential energy impacts in accordance with Appendix F of the CEQA Guidelines. (See *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 209 [explaining that energy analysis described in Appendix F is mandatory for EIRs].)

The EIR should pay particular attention to Land Use and Planning, Hazards and Hazardous Materials, and Public Services. As we explained in our earlier letters, upon incorporation, and in accordance with state law, all areas within the new city boundary would be reclassified as a Local Responsible Area (“LRA”), with the resulting shift in responsibility from the state to the Squaw Valley Public Services District (“SVPSD”) for wildland fires. This increase in local service responsibility could result in a significant reduction in fire protection services, and a significant increase in the potential for environmental damage that would occur in a wildland fire. A continuation of the same level of service would also result in a significant

² / See May 9, 2014, letter from Squaw Valley listing examples of EIRs prepared by LAFCOs to study the environmental effects of a proposed incorporation.

increase in potential operating costs to the SVPSD. This constitutes a potentially significant adverse environmental impact. The El Dorado County LAFCO, under similar circumstances, identified this issue as a significant adverse impact requiring the adoption of mitigation to ensure no degradation of wildland fire service levels occurred as a result of incorporation. (See Attachment C to Squaw Valley letter [April 4, 2014].) Therefore, potential impacts caused by these changes in public services must be fully analyzed in the EIR.

Furthermore, as evidenced in the EPS memorandum provided as an attachment to our April 4, 2014, letter, the IOV incorporation could also divert Transient Occupancy Tax ("TOT") revenue collected within the valley away from Tahoe Area Regional Transit ("TART") to the new city. TART requires \$450,000 (of the \$494,000 in TOT revenue allocated by North Lake Tahoe Resort Association ("NLTRA") for transit in FY 2013-2014), to maintain base levels of service. The new city could reduce the revenue required by TART, resulting in a reduction in base levels of service. This impact must also be considered in the EIR.

III. IOV, through the December 19, 2013 Indemnity Agreement, would incur substantial costs if an adequate EIR is not prepared and, if IOV were to dissolve, LAFCO could be required to pay the same fees/costs.

For all of the reasons explained above (and in detail in our previous letters), Placer County LAFCO must prepare an EIR for the IOV Proposal. If the EIR does not fully comply with the requirements of CEQA, or if Placer County LAFCO chooses to proceed with an MND or other document instead of an EIR, Placer County LAFCO's actions would likely be subject to a Petition for Writ of Mandate and set aside if challenged in court. If litigation ensues, IOV must, upon written request of LAFCO, indemnify LAFCO and pay all litigation fees and costs, including "the legality or adequacy of any determination under the California Environmental Quality Act[.]" (See Agreement to Pay Fees and Costs/Indemnification (Dec. 19, 2013), ¶ 5 [noting environmental review is required for the proposal under CEQA].)

A petitioner who prevails in a CEQA case is generally entitled to recover costs and attorney fees. (Code Civ. Proc., § 1021.5; see *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 269.) California courts have long recognized a "private attorney general" exception to the general rule that attorney fees are not recoverable unless provided for by statute or contract. (See *Serrano v. Priest* (1977) 20 Cal.3d 25, 43; *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 892-93 [Code of civil Procedure section 1021.5 applies to the enforcement of rights under CEQA]; *City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 254 ["It is well settled that the private attorney general theory applies to an action to enforce provisions of CEQA."]; *San Bernardino Valley Audubon v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 754 ["litigation brought to enforce the

Ms. Kristina Berry
July 14, 2014
Page 6

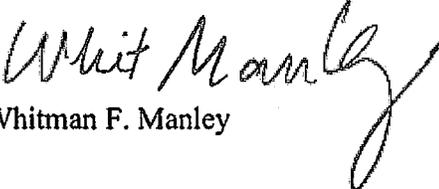
provisions of CEQA ... has been held to involve important rights affecting the public interest, and the private attorney general theory as codified in ... section 1021.5 applies to such suits”].) The fees awarded to a prevailing party generally include those incurred during both litigation and during the administrative process. (See *Edna Valley Watch v. County of San Luis Obispo* (2011) 197 Cal.App.4th 1312, 1315.)

Although the precise amount of any awarded attorneys' fees and costs depends on the number of issues litigated, fees recovered under the statute are often substantial. (See *Healdsburg Citizens for Sustainable Solutions v. City of Healdsburg* (2012) 206 Cal.App.4th 988, 991 [award of more than \$380,000 in attorneys' fees]; *Building a Better Redondo, Inc. v. City of Redondo Beach* (2012) 203 Cal.App.4th 852 [award of \$313,000 in attorneys' fees]; *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 880 [award of \$265,715.55 in fees].)

Requiring an indemnity agreement from IOV was therefore prudent. If it has not already, LAFCO should also require IOV to provide a letter of credit or other financial assurances should LAFCO decide to move forward with a limited form of environmental review. This is because, if IOV were to dissolve, LAFCO could also be required to pay any fees or costs awarded to prevailing petitioners. In our view, potential liability of a fee award should be borne by IOV, not by LAFCO. That is because LAFCO's involvement is entirely a function of the process launched by IOV.

Thank you for your consideration of our comments. We look forward to continuing to participate in Placer County LAFCO's consideration of the IOV Proposal. Please contact me if you have any questions.

Very truly yours,


Whitman F. Manley

June 27, 2014

RECEIVED
AUG 01 2014
LAFCO

Commissioners
Placer County LAFCO
110 Maple Street
Auburn, CA 95603
lafco@placer.ca.gov

Re: Request for exclusion from the incorporation of Olympic Valley

Dear LAFCO Commissioners:

My wife Sandra and I live at 108 Shoshone Court, Olympic Valley, CA. We are long time residents of Olympic Valley. I was raised here and have skied here all my life. We raised our family here, own and operate a contracting business and own several homes and parcels in the Valley. We work with Placer County and have for decades. We find the process challenging, but we're satisfied with the current system.

We are concerned about the proposal in front of you concerning the incorporation of Olympic Valley. Our property is on the edge of the Valley, and on the edge of the proposed incorporation boundary.

We respectfully request our parcel be excluded from the boundary of the proposed incorporation. We also feel strongly that LAFCO must require a full Environmental Impact Report be done for the proposal. We believe more information, not less, is needed for the Commissioners to make an informed decision.

Thank you for your consideration,

Dean Hall
Sandra Hall





NIELSEN MERKSAMER
PARRINELLO GROSS & LEONI LLP

EXHIBIT B-3

2350 Kerner Boulevard, Suite 250
San Rafael, California 94901

t: 415.389.6800
f: 415.388.6874

August 5, 2014

RECEIVED
AUG 08 2014
LAFCO

VIA EMAIL & FED EX

Chairman Weygandt and
Commissioners
Placer County LAFCO
110 Maple Street
Auburn, CA 95603
lafco@placer.ca.gov

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

Re: Olympic Valley Incorporation Proposal (LAFCO #2013-02)

Dear Chairman Weygandt, Commissioners, and Ms. Berry:

We are writing on behalf of Save Olympic Valley, a coalition of local concerned residents, business owners, property owners, and workers, regarding the deposit that incorporation proponents are required to make to cover the full costs to process their proposal. Proponents made an opening \$25,000 deposit to cover *initial* staff time but have, to date, failed to make the requisite deposit to cover the legally required comprehensive fiscal analysis ("CFA") and environmental impact report ("EIR"), or even to cover the additional, estimated LAFCO staff and legal time. LAFCO's latest request, in June, for an additional deposit reflects only the estimated CFA cost and does not include amounts to cover the EIR and additional staff/legal costs. We believe that was an oversight, but that it can be easily corrected.

Proponents previously represented that they raised only \$87,000 to date, and that their stated goal was to raise only \$115,000. This is woefully inadequate to fund their proposal. As detailed below, they will need at least two hundred thousand dollars, and likely much more. Taxpayers must not be left with a tremendous amount of unpaid debt or exposed to substantial liability if proponents simply walk away. A meaningful and appropriate deposit in full—as expressly contemplated in proponents' contract with LAFCO and specifically authorized by state law—will at least help protect against that.

There are indeed many voices throughout Olympic Valley and the greater Tahoe region expressing tremendous skepticism regarding the

Sacramento Office
1415 L Street, Suite 1200 | Sacramento, California 95814
t: 916.446.6752 | f: 916.446.6106 | www.nmgovlaw.com

incorporation proposal, but if proponents themselves are unable and unwilling to cover the costs of staff labor and the financial and environmental studies legally required to process their application, their proposal must come to an end. These costs alone are easily \$150,000 to \$200,000 through the EIR, if not much more, and proponents must either timely make the deposit in full or finally put an end to the proposal.

As an initial matter—and fully consistent with controlling state law—proponents have agreed in a legally binding contract with LAFCO that it is their sole responsibility to deposit all funds necessary to process their proposal before any of the time-consuming work is commenced. (See “Agreement to Pay Fees and Costs/Indemnification,” dated 12/19/2013.) First, proponents expressly agreed to make an *initial* \$25,000 deposit to cover LAFCO staff and legal costs, filing fees, copying costs, and other costs to LAFCO, which are defined in the agreement as “Costs of Processing.” Second, proponents *separately* agreed they are fully responsible for all “Consultant Costs” (i.e., “consultants and other third parties deemed by LAFCO to be necessary to assist with the review and processing of the Proposal, including the entire cost of selection and retention”). Proponents expressly acknowledged:

Applicant understands at a minimum, the incorporation process will require a comprehensive fiscal analysis and an environmental review. These studies will be performed by outside consultants and Applicant will be responsible for the costs of the studies and related consultant costs.

(*Id.* at ¶ 3; see also Gov. Code § 56383(c) [expressly authorizing LAFCOs to require an applicant to deposit “all of the required amount that will be owed with the executive officer before any further action is taken”].)

Indeed, the Agreement to Pay Fees and Costs/Indemnification mirrors state law, specifying that, after the initial deposit of \$25,000 has been made, “Applicant will then be required to deposit additional funds in an amount specified by the Executive Director *in order to maintain adequate funds on deposit to pay for the costs associated with processing the proposal.*” Also consistent with state law, the Agreement further provides that if the required deposit is not made, work on the proposal will terminate and “the Commission will consider applicants to have waived any and all statutory deadlines.” (Agreement at ¶ 2.)

As expressly contemplated by controlling state law—and required by the Agreement executed by proponents—requiring an advance payment for the *full, anticipated* costs to process the incorporation proposal is the prudent and responsible approach. It avoids impermissibly leaving County taxpayers on the hook to pay for something that is, as a matter of law, the sole financial responsibility of those advocating for it. If proponents are unwilling or unable to pay to complete the necessary work by LAFCO and retained consultants, state law fully supports the determination that it not be started.

Here, LAFCO has determined that the estimated cost to complete the comprehensive fiscal analysis (“CFA”) is at least \$51,750.00 and, via letter dated June 23, 2014, requested that proponents provide “funding in full.” (See Ex. A hereto.) To date, proponents have not provided these funds. The *separate* costs to complete the necessary environmental review, including hiring an on-call environmental consultant and preparing the requisite environmental impact report (“EIR”), has not, to our knowledge, been publicly released. It is anticipated, however, that the cost to retain environmental consultants to assess, draft, receive/respond to public comments, revise, and finalize the EIR will be at least \$90,000. (See *Legislative Analyst’s Office*, “CEQA: Making It Work Better” (March 20, 1997) [finding that the average cost of preparing an EIR was \$50,000 in 1990; adjusted for inflation with a mere 2.5% annual CPI increase, this is \$90,436 in 2015, the projected year of completion for the EIR].) Further, proponents’ initial deposit of \$25,000 to cover LAFCO staff and attorney time, as well as other direct costs incurred by LAFCO, will need to be supplemented to cover the substantial amount of work that has and will be done by LAFCO staff and legal counsel with respect to the CFA and EIR.

Accordingly, requiring proponents to make an additional deposit of \$150,000 to \$200,000 is most appropriate here, particularly because that amount may not even adequately protect the County from incurring expenses that cannot be recaptured later from proponents. We project that LAFCO will need at least \$200,000 in additional funds from proponents in order to fund the large amount of work that must be undertaken *on proponents’ behalf* through the very early part of 2015.

It is important to recognize that incorporation proponents have also agreed to indemnify LAFCO “from and against all claims, lawsuits, administrative proceedings, damages, judgments, expenses and other

liabilities or costs, including litigation costs and attorneys' fees, arising out of, resulting from or in connection with Placer LAFCO's action regarding the proposal." (Agreement at ¶ 5.) It therefore begs the question: if proponents are unwilling or unable to pay the legally required deposit to process their proposal, are they sufficiently organized and well-funded enough to honor their indemnification agreement? As of the date of this letter, proponents have only raised \$87,000, and they are being investigated by the state's political watchdog agency; their failure to date to disclose even a penny of their limited finances makes it even more critical that they pay in full and in advance. County taxpayers simply cannot be left holding the bag for costs incurred solely on proponents' behalf, nor should taxpayers be exposed to unnecessary and avoidable liability.

Finally, we note that the Government Code section addressing LAFCO deposit requirements provides, "The deposit shall be made within the time specified by the commission." (*Id.*) Thus, setting a reasonable time for proponents to make the requisite deposit or elect to abandon their proposal is expressly contemplated and authorized by state law. Ventura LAFCO, for example, provides that "[i]f Applicant fails to pay in full any sums billed by LAFCO within 15 days of the billing, the LAFCO Executive Director may stop processing the Applicant's request and/or set the request for hearing by LAFCO with a recommendation for denial due to failure to pay fees." (See Ex. B hereto.)

We respectfully suggest that Ms. Berry, as authorized in the Agreement to Pay Fees and Costs/Indemnification, set a deadline for August 12, 2014, the day prior to the next regularly scheduled LAFCO meeting.

There is a lot at stake in any incorporation proposal, but that is particularly the case where, like here, the proposal has extreme and negative consequences for property owners, taxpayers, and the County. For this reason and others, the Government Code expressly states, "It is the intent of the Legislature that an incorporation proposal shall be processed in a timely manner." (Gov. Code § 56658(b)(2).) Thus, as recognized by the Legislature, an incorporation proposal must not be permitted to drag on for extended periods while proponents contemplate whether they even wish to proceed.

Proponents here must either deposit at least \$150,000 to \$200,000 to address the costs of the CFA, the on-call environmental consultant, the

Placer County LAFCO
August 5, 2014
Page 5

EIR, LAFCO staffing and legal costs, and other estimated costs to be incurred by LAFCO to process their proposal—for which they are unquestionably responsible under the law and by contract—or they must conclude their effort by not making the required, timely deposit. It has already been over a year since proponents filed their incorporation petition. It is time for proponents to pay the anticipated costs in full or abandon the effort.

Thank you for your attention to this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean P. Welch", with a long horizontal flourish extending to the right.

Sean P. Welch

cc. William M. Wright, General Counsel, Placer County LAFCO

SPW/pas

Attachment A

PLACER COUNTY LOCAL AGENCY FORMATION COMMISSION

110 MAPLE STREET, AUBURN, CALIFORNIA 95603 - 530-889-4097
LAFCO@PLACER.CA.GOV

COMMISSIONERS:

ROBERT WEYGANDT
CHAIR (COUNTY)

GRAY ALLEN
VICE CHAIR (SPECIAL
DISTRICTS)

RON TREABESS,
(SPECIAL DISTRICTS)

DR. BILL KIRBY
(CITY)

JIM HOLMES
(COUNTY)

E. HOWARD RUDD
(PUBLIC)

MIGUEL UCOVICH
(CITY)

**ALTERNATE
COMMISSIONERS:**

JIM GRAY
(PUBLIC)

JACK DURAN
(COUNTY)

STAN NADER
(CITY)

BRIAN SHEEHAN
(SPECIAL DISTRICTS)

**STAFF:
KRIS BERRY**
EXECUTIVE OFFICER

LINDA WILKIE
CLERK TO THE
COMMISSION

WILLIAM WRIGHT
LAFCO COUNSEL

June 23, 2014

Dr. Fred Ilfeld
P.O. Box 2160
Olympic Valley, CA 96146

RE: Olympic Valley Comprehensive Fiscal Analysis

Dear Dr. Ilfeld:

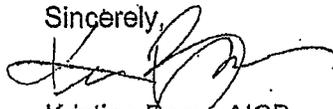
As you are aware, the Commission selected Citygate Associates as the consultant for the preparation of the Comprehensive Fiscal Analysis for the Olympic Valley Incorporation proposal.

We are preparing a contract with the consultant for the preparation of the report. Prior to execution of the contract, we will need funding in full for the report, a total of \$51,750.00.

We also briefly discussed after the meeting the idea of waiting until the fiscal year data for 2013-2014 is available, which is anticipated to be early to mid August, 2014. Although this may cause a slight delay in the preparation of the study, the use of current data is important to the accuracy of the report.

Please feel free to contact me if you have any questions regarding this letter.

Sincerely,



Kristina Berry, AICP
Executive Officer

Cc:: Citygate Associates

Attachment B



VENTURA LOCAL AGENCY FORMATION COMMISSION

COUNTY GOVERNMENT CENTER • HALL OF ADMINISTRATION

800 S. VICTORIA AVENUE • VENTURA, CA 93009-1850

TEL (805) 654-2576 • FAX (805) 477-7101

HTTP://WWW.VENTURA.LAFCO.CA.GOV

AGREEMENT FOR PAYMENT OF LAFCO FEES

Applicant: _____

LAFCO Case Name and No. _____ (LAFCO USE ONLY)

The Applicant understands and agrees as follows:

1. The Ventura Local Agency Formation Commission ("LAFCO") has established a fee schedule pursuant to Government Code 56383 to recover a portion of the estimated reasonable costs of LAFCO proceedings. Applicant has submitted a request for action to LAFCO that requires an initial deposit of funds in accordance with the fee schedule. Applicant hereby pays the initial deposit fee of \$ _____ (LAFCO USE ONLY) to reimburse LAFCO for costs associated with the request.
2. LAFCO's costs of processing the request, consisting of LAFCO staff time at hourly rates based on the most recent LAFCO fee schedule, and all direct LAFCO costs associated with Applicant's request, will be charged to Applicant and deducted from the initial deposit fee. LAFCO's costs include but are not limited to: (a) Staff time spent reviewing application materials, responding by phone or correspondence to all inquiries relating to the request, preparing reports, attendance and participation at meetings, and making filings necessary to complete proceedings, and; (b) Direct costs for public notices, legal counsel, County, state and federal agency review and information, and consultants hired by LAFCO to assist in the review and processing of the request.
3. If the LAFCO Executive Officer determines the initial deposit fee is insufficient to reimburse all of LAFCO's costs incurred and to be incurred to complete the requested action, LAFCO will bill Applicant for, and Applicant must pay, an additional deposit equal to the additional fee estimated by the Executive Officer as necessary to fully reimburse LAFCO.
4. After all requested actions are complete the LAFCO Executive Officer will compute the actual final costs and will refund any unused portion of the deposit, or will bill Applicant for any unreimbursed costs. Any refunds will be solely for the unused portion of the deposit and will not include any interest.
5. If Applicant fails to pay in full any sums billed by LAFCO within 15 days of the billing, the LAFCO Executive Officer may stop processing Applicant's request and/or set the request for hearing by LAFCO with a recommendation for denial due to failure to pay fees. The Executive Officer shall not be required to record a certificate of completion or otherwise complete any requested action until and unless all fees are paid in full.

LAFCo Application for a District Change of Organization

Page 18 of 19

6. Applicant may make a written request to LAFCO for an accounting of billed sums, and LAFCO will respond within a reasonable period. Applicant's obligations to pay the required fees shall not be delayed or deferred by such a request.

7. The undersigned is (check one):

The individual applicant or petitioner who agrees to be bound by the terms of this agreement and to pay the sums due LAFCO.

The authorized representative of the Applicant who is empowered to execute this agreement and who agrees the Applicant shall be bound by its terms and shall pay the sums due LAFCO.

The property owner or real party in interest for an application or petition filed or to be filed with LAFCO by a City or Special District. I agree to be bound by the terms of this agreement as they are applicable to Applicant and to pay to LAFCO all sums due from Applicant. I agree that notice to Applicant of any obligation arising hereunder shall be construed to be notice to me.

Date: _____

Name: _____

Mailing Address: _____

Phone: _____

Signature: _____