LOCAL AGENCY FORMATION COMMISSION
FOR SAN BERNARDINO COUNTY

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DATE: **JANUARY 10, 2024**

FROM: **SAMUEL MARTINEZ, Executive Officer**
MICHAEL TUERPE, Assistant Executive Officer

TO: **LOCAL AGENCY FORMATION COMMISSION**

SUBJECT: **Agenda Item #7: LAFCO 3260 – Annexation to the Lake Arrowhead Community Services District (Hesperia Farms Property - District Owned)**

INITIATED BY:

Resolution of the Board of Directors of the Lake Arrowhead Community Services District

RECOMMENDATION:

The staff recommends that the Commission approve LAFCO 3260 by taking the following actions:

1. For environmental review, certify that LAFCO 3260 is exempt from the provisions of the California Environmental Quality Act and direct the Executive Officer to file the Notice of Exemption within five (5) days;

2. Approve LAFCO 3260, with the standard LAFCO terms and conditions that include the "hold harmless" clause for potential litigation costs by the applicant;

3. Waive protest proceedings, as permitted by Government Code Section 56662(d), with 100% landowner consent to the annexation proposal; and,

4. Adopt LAFCO Resolution #3386, setting forth the Commission's determinations and conditions of approval concerning LAFCO 3260.

BACKGROUND:

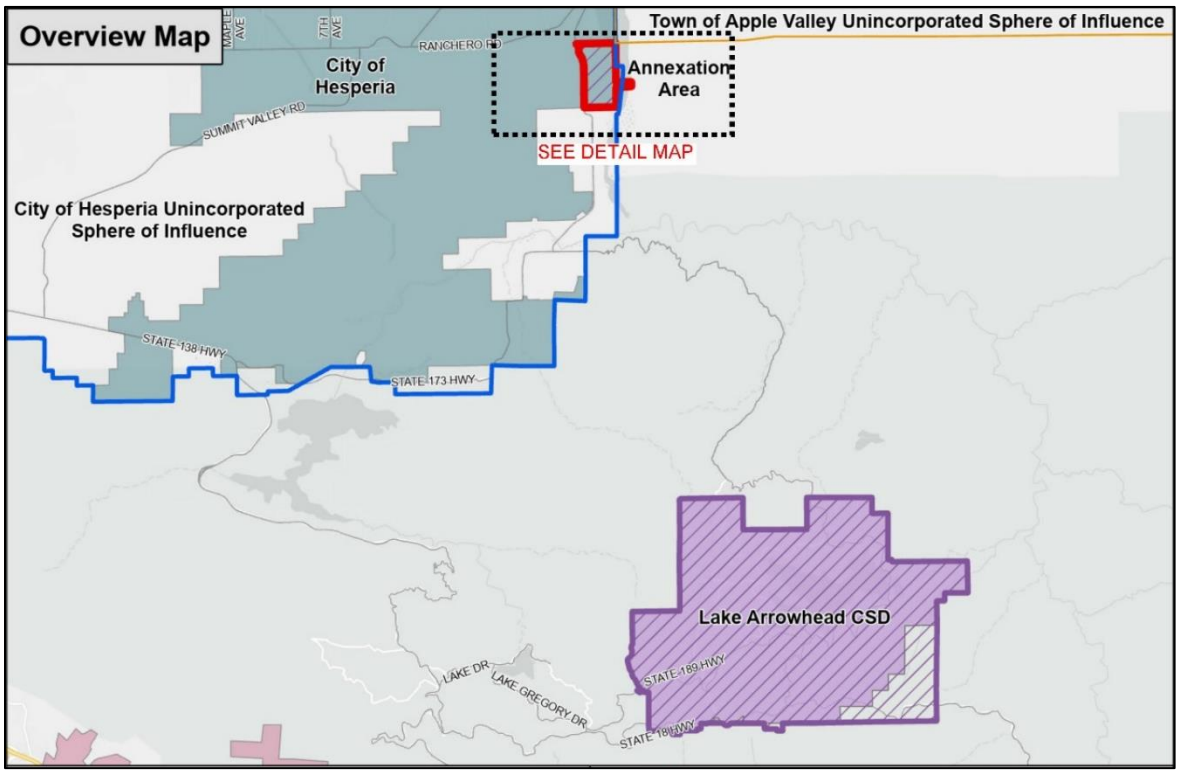
Sphere of Influence Determination

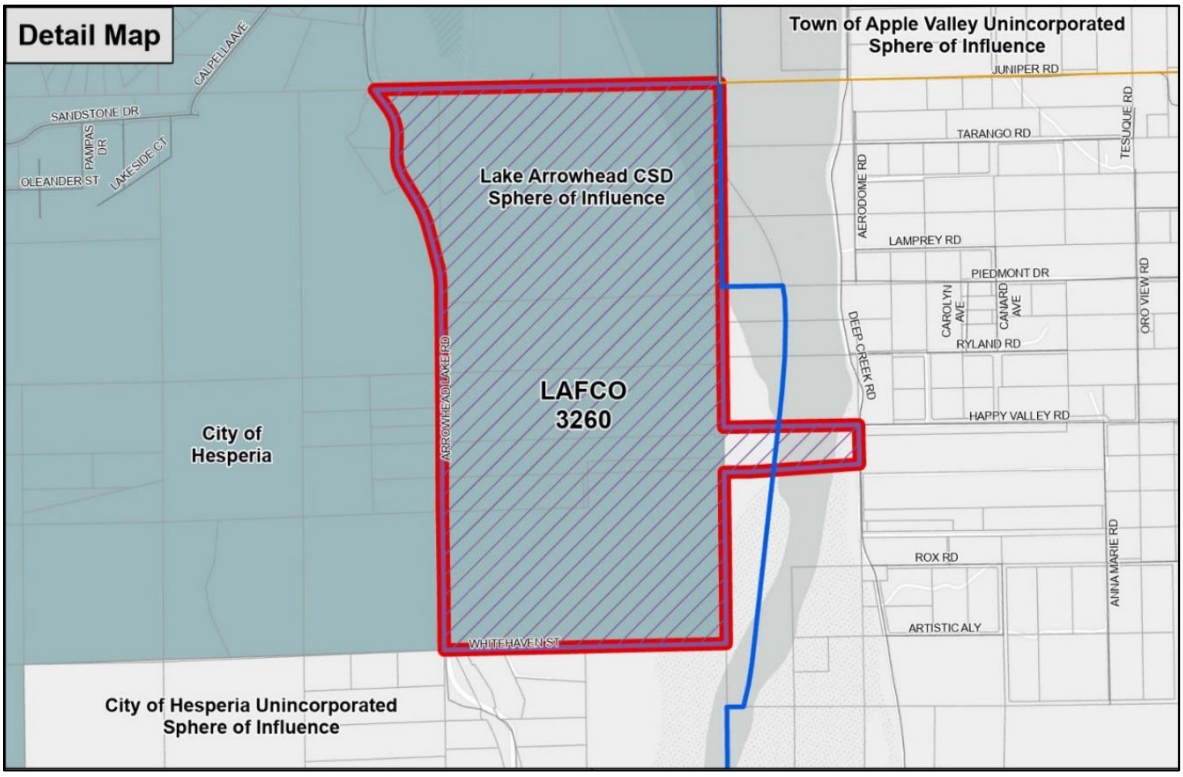
In 2010, as part of the Commission's consideration of the service review and sphere update for the Lake Arrowhead Community Services District ("Lake Arrowhead CSD" or the

"District"), the Commission determined to expand the District's sphere of influence to include the Hesperia Farms Property located within and adjacent to the City of Hesperia. The Commission noted that since the territory is outside the boundaries of the District, it pays ad valorem property taxes on said parcels. The Commission determined that as a cost savings measure, if the District were to annex these parcels and continue its existing use, it could file for removal from the tax roll as exempt property and eliminate the financial obligation for payment of ad valorem property tax. Included as Attachment #3 to this report is the Commission's Resolution No. 3117, which outlines its approval of the District's sphere of influence expansion of the Hesperia Farms Property.

LAFCO 3260

LAFCO 3260 is a proposal initiated by the Lake Arrowhead CSD requesting annexation of the District-owned parcels associated with the Hesperia Farms Property, encompassing approximately 344 acres, located along the Mojave River on the east side of Arrowhead Lake Road immediately south of the Hesperia Lake Park, within the District's existing sphere of influence. Below are maps that provide a general overview as well as a detail of the proposed annexation area. Location and vicinity maps are also included as Attachment #1 to this report.





Lake Arrowhead CSD owns all 11 parcels within the annexation area, which the District uses (and will continue to use) for disposal of its treated effluent for groundwater recharge. Currently, the District is obligated to pay property taxes on these parcels since these are all located outside of the agency's boundaries.

The District's justification as identified in its application is to annex the District-owned parcels in order to relieve the District from paying property taxes on said parcels. A public agency is exempt from paying property taxes on lands that it owns provided the lands are within the agency's boundaries. Upon annexation, these parcels will be part of the District and, therefore, would be relieved of its annual property tax obligation for said parcels.

This report will provide the Commission with the information related to the four major areas of consideration required for a jurisdictional change – boundaries, land uses, service issues and the effects on other local governments, and environmental considerations.

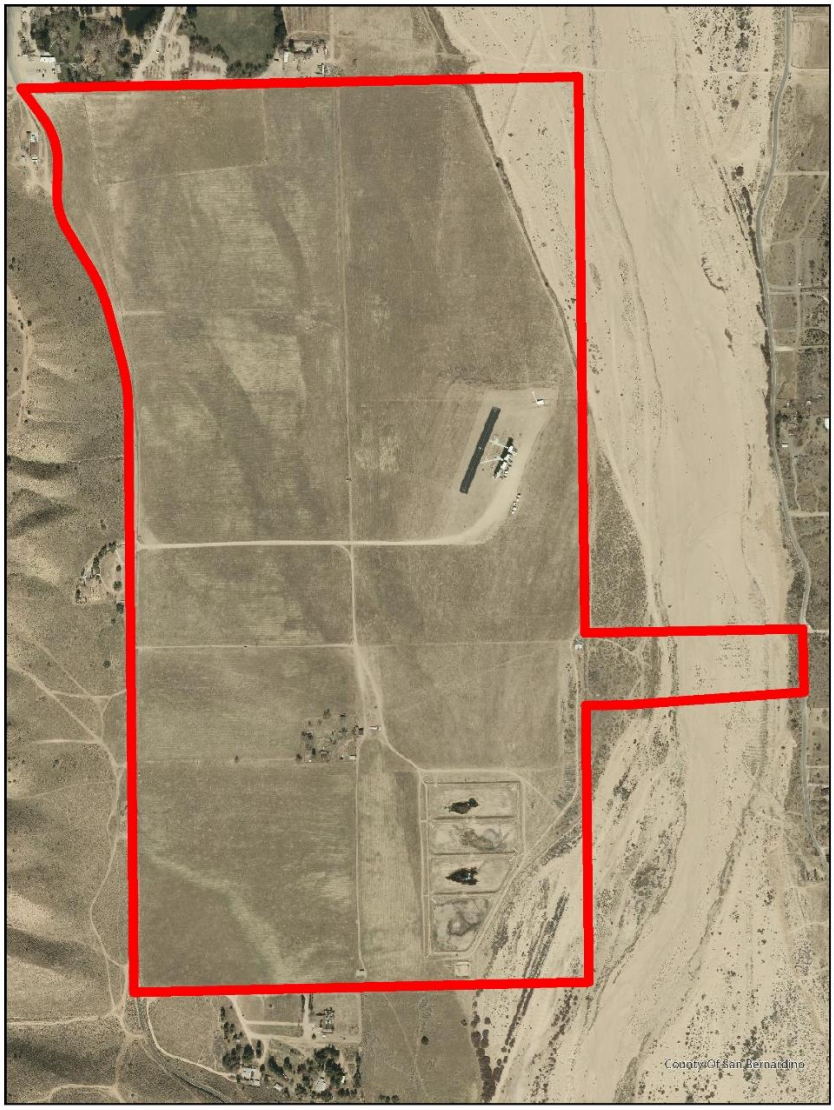
BOUNDARIES:

The District-owned parcels associated with the Hesperia Farms Property encompasses a total of approximately 344 acres and is located along the Mojave River on the east side of Arrowhead Lake Road immediately south of the Hesperia Lake Park. The area includes a total of 11 parcels, Assessor Parcel Numbers 0397-013-03, -04, -05, -17, -18, -19, -20, -21, and -22, and 0433-171-72 and -74.

LAFCO 3260 has no boundary concern. The annexation into the District is required in order to relieve itself of a recurring annual property tax obligation on the District-owned parcels, which is a savings that would benefit the ratepayers for the District.

LAND USE:

The annexation area is generally vacant. The area includes the District's percolation ponds and some ancillary structures. In addition, a local radio-controlled airplane club uses one of the parcels for its runway/field. Below is an aerial view of the property.



The existing uses directly surrounding the annexation area are a mix of vacant land and residential property to the west and south, a local park lake (Hesperia Lake Park) to the north, and the Mojave River along its eastern edge.

City's General Plan:

The bulk of the annexation area, which is within the City of Hesperia, has a zoning designation of RR-2½ (Rural Residential, 2.5 acres minimum).

County Land Use Designation:

Two properties lying across the Mojave River are within the County's jurisdiction. The County's land use designation includes primarily FW (Floodway) with a sliver of RL-10 (Rural Living, 10 acres minimum) adjacent to Deep Creek Road.

District's Solar Project

Independent of this annexation proposal, the District is proposing to build a solar project (see Primer below) on a six-acre portion of the annexation area. The District's justification for this annexation is to relieve itself of the property tax obligation on these parcels. This is consistent with the Commission's 2010 action to expand the District's sphere of influence to include this area for the same reasoning – property tax relief. As for the solar project, the court has determined that the solar project can move forward regardless of an annexation (see Primer below). Therefore, there are no concerns related to the District's solar project.

No change in land use is anticipated as a result of the annexation. In addition, approval of this proposal will have no direct impact on the current land use designations assigned to the area or the solar project proposed on the site. Therefore, there are no land use concerns related to this proposal.

Lake Arrowhead Community Services District Solar Project

This primer box provides a history of the District's solar project.

To reduce its energy costs and the carbon footprint of its operations, the District proposes to construct a 0.96 megawatt (MW) solar photovoltaic project on a six-acre portion of the Hesperia Farms Property. After several additional years of research by the District, it was determined that the highest economic return and the fewest negative impacts would result from locating a solar facility at the Hesperia Farms Property.

Original Site. In December 2015, the District adopted an Initial Study and Mitigated Negative Declaration under the California Environmental Quality Act (CEQA and approved the solar project (Original Site). The District also determined the solar project qualified for an Absolute Exemption from City zoning for facilities generating electrical energy under Government Code section 53091 and that the exception to the Absolute Exemption for "transmission" did not apply. Alternatively, the District found that the solar project fell under a Qualified Exemption from City zoning under Gov. Code section 53096 for facilities involving the "transmission" of electrical energy where there is no feasible alternative to the local agency's proposal.

In February 2016, the City filed a petition for writ of mandate challenging, among other things, the District's determination that the Solar Project at the Original Site was exempt under the absolute exemption and the qualified exemption. Ultimately, the Court of Appeal confirmed that the Solar Project does not have to be integral to the District's water and sewer operations for the exemptions to apply. (*City of Hesperia v. Lake Arrowhead Community*

Services District (2019) 37 Cal.App.5th 734, 759.) But the Court of Appeal also found the Solar Project involves "transmission" of electrical energy within the meaning of the exception to the absolute exemption, rendering the absolute exemption inapplicable. (*Ibid.*) Additionally, the Court of Appeal found there was not substantial evidence in the District's administrative record demonstrating "there is no feasible alternative" to the proposed location of the Solar Project, as required under the qualified exemption in Gov. Code section 53096. The Court found the evidence in the record "supports a finding that the Project Site is a good location for the Solar Project" but did not "contain any evidence of an alternative location for the Solar Project (or evidence that no alternative exists)."

Alternative Site. The Original Site for the Solar Project was to be in the southern portion of the Hesperia Farms Property. During a nine month stay of the appeal to allow for settlement, the District applied for a General Plan amendment and a conditional use permit under the City's zoning ordinance for an alternative site for the Solar Project located 660 feet to the north of the southern property line on the Hesperia Farms Property (Alternative Site).

The Alternative Site is the same in design and layout, but it requires additional trenching to install electrical conduit to connect the site to the SCE facilities along the southern boundary of the property. In August 2017, the District adopted an Addendum to the Mitigated Negative Declaration for the Alternative Site under CEQA and approved the Alternative Site. The District determined the change from the Original Site to the Alternative Site would not result in any new significant environmental effects triggering the need for further environmental review and filed a Notice of Determination. Despite the Planning Commission's recommendation to approve the Alternative Site, in 2018 the City Council denied the District's application because it was "inconsistent with the goals and policies of the General Plan" and would be more "comparable to, and compatible with commercial and industrial uses."

The District further investigated and evaluated alternatives to offset its energy costs. In 2019/20, experts were retained to prepare two technical reports: (1) Technical Memorandum for Feasibility Evaluation of Potential Photovoltaic System Sites by Tidewater Incorporated, dated May 2020 and (2) RES-BCT Project Review by Sage Energy Consulting, Inc., dated April 2020. Relying on these expert reports, District staff documented their additional investigation of alternatives to the Solar Project on the Alternative Site in a standalone, robust report entitled Lake Arrowhead Community Services District — Alternatives to Proposed Solar Photovoltaic System on Hesperia Farms Property, dated May 2020.

In June 2020, at a regularly-held public meeting, the District's Board of Directors unanimously adopted Resolution No. 2020-04 determining there is no feasible alternative to the Proposal, rending the City's zoning ordinance inapplicable to the Alternative Site approved by the District in 2017 under Government Code section 53096.

In September 2020, the City filed a Petition for Writ of Mandate and Complaint entitled *City of Hesperia v. Lake Arrowhead Community Services District et al*., San Bernardino Superior Court, Case No. CIVDS 2019176, challenging the District's June 2020 determination that the City's zoning ordinances were inapplicable to the Hesperia Farms Property under Gov. Code section 53096. Judgment was entered in favor of the District by the trial court on March 8, 2022. (See Exhibit 1 to Attachment 2A). The City appealed the ruling and the Court of Appeal ruled in the District's favor on July 12, 2023. ((2023) 93 Cal.App.5th 489, see Exhibit 2 to Attachment 2A).

SERVICE ISSUES AND EFFECTS ON OTHER LOCAL GOVERNMENTS:

In every consideration for jurisdictional change, the Commission is required to look at the existing and proposed service providers within an area. Current County service providers within the annexation area include: San Bernardino County Fire Protection District and its North Desert Service Zone, County Service Area 60 (Apple Valley Airport), and County Service Area 70 (multi-function agency – portion). In addition, the following entities overlay the annexation area: City of Hesperia (portion), Hesperia Water District (portion); Hesperia Park and Recreation District (portion), Mojave Water Agency, and Mojave Desert Resource Conservation District. None of the service providers and overlaying entities are affected by this proposal.

The application includes a plan for the extension of services for the annexation area as required by law and Commission policy (included as part of Attachment #2 to this report). The Plan for Service indicates no services are anticipated to change as a result of the annexation. The annexation into the District is required in order to relieve itself of a recurring annual property tax obligation on the District-owned parcels, which is a savings that would benefit the ratepayers for the District. As a result, the proposed annexation will have a positive financial effect (savings) for the District.

As noted earlier, this proposal does not affect any of the overlaying agencies. Law enforcement responsibilities will continue to be provided by the Hesperia Police Department (through its contract with the San Bernardino County Sheriff's Department) as well as the County Sheriff's Department itself. Both service providers will continue to serve their respective areas upon completion of the annexation. Fire protection and paramedic services will continue to be provided by the San Bernardino County Fire Protection District and its North Desert Service Zone, which serves the entire annexation area.

As required by Commission policy and State law, the Plan for Service shows that the extension of its services will maintain current service levels provided through the County or any of the other overlaying entities.

ENVIRONMENTAL CONSIDERATIONS:

As the CEQA lead agency, the Commission's Environmental Consultant, Tom Dodson from Dodson and Associates, has indicated that the review of LAFCO 3260 is exempt from the California Environmental Quality Act (CEQA). This recommendation is based on the finding that the Commission's approval of the annexation has no potential to cause any adverse effect on the environment. No proposal for development and/or physical modification has been identified on any of the parcels being annexed into the District. Therefore, the proposal is exempt from the requirements of CEQA, as outlined in the State CEQA Guidelines, Section 15061 (b)(3). Staff recommends that the Commission adopt the Common Sense Exemption for this proposal. A copy of Mr. Dodson's analysis is included as Attachment #5 to this report.

WAIVER OF PROTEST PROCEEDINGS:

Lake Arrowhead CSD is the sole landowner for all the parcels being considered for the proposed annexation (see Attachment #4 – Landowner Consent Form) and there are no other subject agencies associated with this proposal other than the District itself. Therefore, if the Commission approves LAFCO 3260, staff is recommending pursuant to Government Code Section 56662(d) that protest proceedings be waived and that the Executive Officer be directed to complete the action following completion of the mandatory 30-day reconsideration period.

CONCLUSION:

The annexation application was submitted by the Lake Arrowhead CSD in order to relieve itself of a recurring annual property tax obligation on the District-owned parcels, which is a savings that would benefit the ratepayers for the District. A public agency is only exempt from paying property taxes on lands that it owns if the lands are within the agency's boundaries.

Therefore, for these reasons, and those outlined throughout the staff report, staff supports the approval of LAFCO 3260.

DETERMINATIONS:

The following determinations are required to be provided by Commission policy and Government Code Section 56668 for any change of organization/reorganization proposal:

1. The County Registrar of Voters Office has determined that the annexation area is legally uninhabited, containing zero registered voters as of October 11, 2023.

2. The County Assessor's Office has determined that the total assessed value of land within the annexation area is $531,416 as of December 20, 2022.

3. The annexation area is within the sphere of influence assigned the Lake Arrowhead Community Services District.

4. Legal notice of the Commission's consideration of the proposal has been provided through publication in the *Alpine Mountaineer News*, a newspaper of general circulation within the Lake Arrowhead community, and *The Daily Press, a* newspaper of general circulation within the annexation area. As required by State law, individual notification was provided to affected and interested agencies, County departments, and those individuals and agencies having requested such notice.

5. In compliance with the requirements of Government Code Section 56157 and Commission policies, LAFCO staff has provided individual notice to landowners (170) and registered voters (76) surrounding the annexation area (totaling 246 notices). Comments from registered voters, landowners, and other individuals and

any affected local agency in support or opposition have been reviewed and considered by the Commission in making its determination.

6. The City of Hesperia's zoning designation for the portion of the area that is in the city is RR-2½ (Rural Residential, 2.5 acres minimum). The County's current land use designations for the annexation area are: FW (Floodway) and RL-10 (Rural Living, 10 acres minimum). This annexation has no direct impact on said land use designations.

7. The Southern California Associated Governments (SCAG) has adopted its 2020-2045 Regional Transportation Plan and Sustainable Communities Strategy (RTPSCS) pursuant to Government Code Section 65080. LAFCO 3260 has no direct impact on SCAG's Regional Transportation Plan and Sustainable Communities Strategy.

8. The Commission's Environmental Consultant, Tom Dodson and Associates, has recommended that this proposal is exempt from environmental review based on the finding that the Commission's approval of the annexation has no potential to cause any adverse effect on the environment; and therefore, the proposal is exempt from the requirements of CEQA, as outlined in the State CEQA Guidelines, Section 15061 (b)(3). Mr. Dodson recommends that the Commission adopt the Exemption and direct its Executive Officer to file a Notice of Exemption within five (5) days.

9. The annexation area is served by the following local agencies:

    County of San Bernardino
    City of Hesperia (portion)
    Hesperia Water District (portion)
    Hesperia Park and Recreation District (portion)
    Mojave Water Agency
    Mojave Desert Resource Conservation District
    San Bernardino County Fire Protection District, its North Desert Service Zone, and its Zone FP-5 (portion)
    County Service Area 60 (Apple Valley Airport)
    County Service Area 70 (unincorporated County-wide multi-function agency -- portion)

    None of the agencies are be detached as a function of this annexation. Said agencies will continue to overlay the annexation area.

10. A plan for service was prepared for the annexation area, as required by law. The Plan indicates no service are anticipated to change as a result of the annexation. The annexation into the Lake Arrowhead Community Services District is to relieve itself of a recurring annual property tax obligation on the District-owned parcels. As a result, the proposed annexation will have a positive financial effect (savings) for the District. A copy of this plan is included as a part of Attachment #2 to this report.

11. The annexation can benefit from the availability and extension of services provided by any of the underlying agencies. However, the plan for service indicates no service are anticipated to change as a result of the annexation.

12. This proposal will not affect the fair share allocation of the regional housing needs assigned the County or the City of Hesperia through the Southern California Association of Government's (SCAG) Regional Housing Needs Allocation (RHNA) since the annexation area will remain vacant and used for public facilities (i.e. percolation ponds).

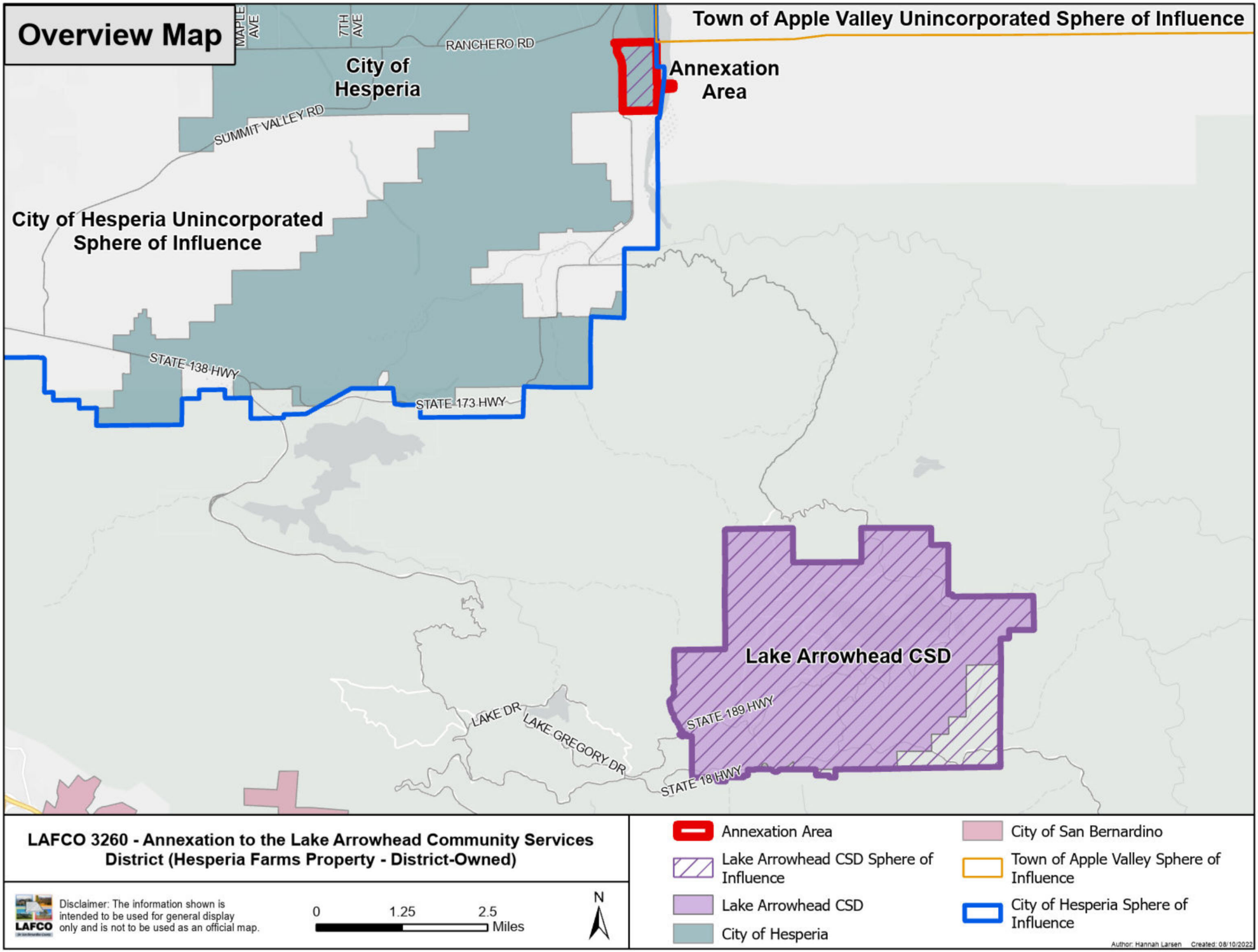
13. With respect to environmental justice, the annexation proposal—wherein the parcels being annexed into the Lake Arrowhead Community Services District will remain vacant and used for public facilities (groundwater recharge)—will not result in the unfair treatment of any person based on race, culture or income.

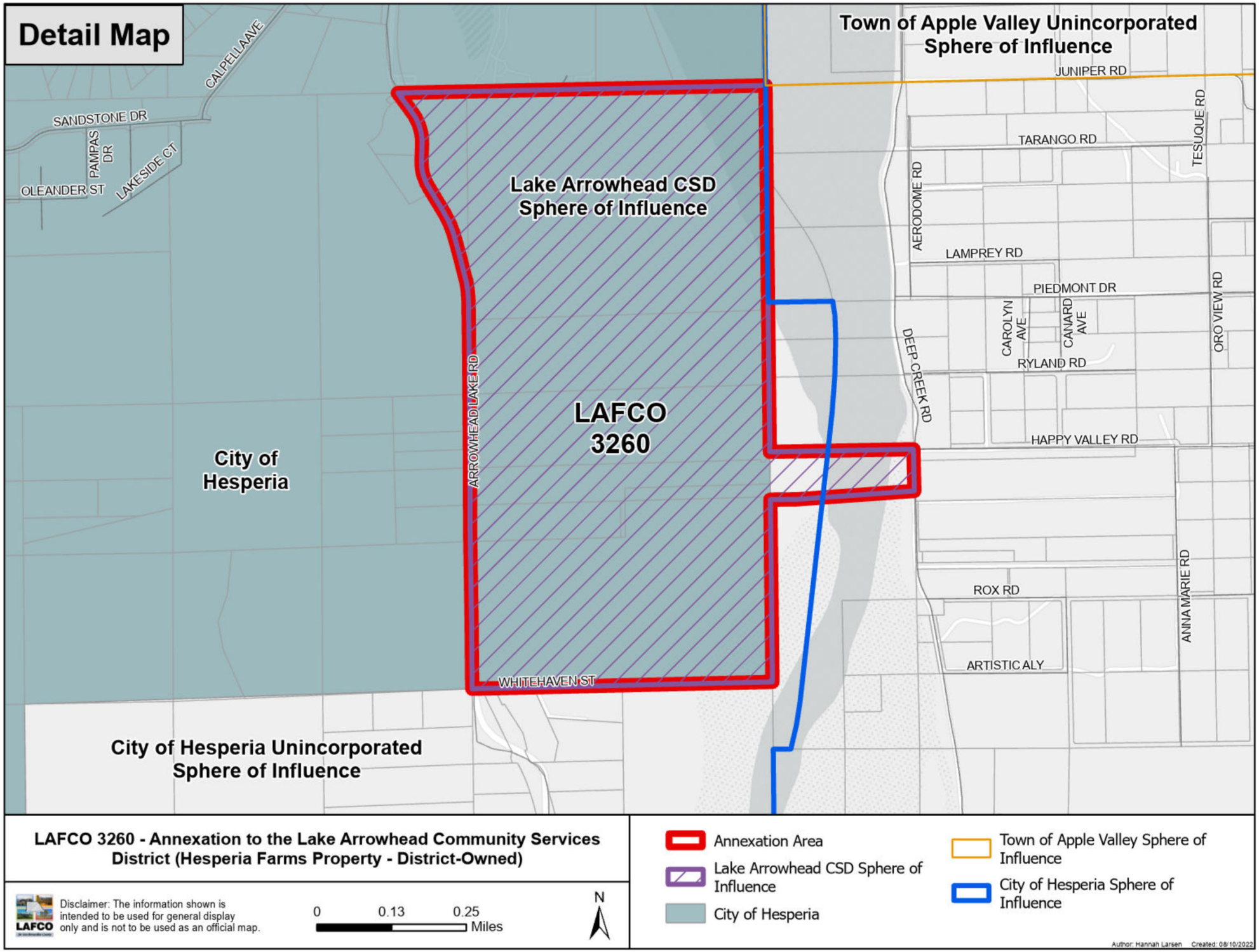
14. The County of San Bernardino adopted a resolution determining there will be a zero property tax transfer as a result of the annexation. This fulfills the requirements of Section 99 of the Revenue and Taxation Code.

15. The maps and legal descriptions as revised are in substantial compliance with LAFCO and State standards through certification by the County Surveyor's Office.

Attachments:

1. Vicinity Maps and Official Map
2. Lake Arrowhead Application Forms
   A. Lake Arrowhead Community Services District Application Form & Attachment
      - Exhibit 1 – Trial Court Judgement including Final Ruling (Exhibit 1) and Tentative Ruling (Exhibit A to Final Ruling)
      - Exhibit 2 – Court of Appeal Ruling
   B. Lake Arrowhead Community Services District Supplemental Annexation Form & Plan for Service
3. LAFCO Resolution No. 3117: Service Review and Sphere of Influence Update for the Lake Arrowhead Community Services District (December 2010)
4. Landowner Consent Form
5. Tom Dodson's Environmental Response for LAFCO 3260
6. Draft Resolution No. 3386


Overview Map
MAPLE AVE
7TH AVE
RANCHERO RD
City of Hesperia
Annexation Area
Town of Apple Valley Unincorporated Sphere of Influence
SUMMIT VALLEY RD
City of Hesperia Unincorporated Sphere of Influence
STATE 138 HWY
STATE 173 HWY
Lake Arrowhead CSD
STATE 189 HWY
LAKE DR
LAKE GREGORY DR
STATE 18 HWY
LAFCO 3260 - Annexation to the Lake Arrowhead Community Services District (Hesperia Farms Property - District-Owned)
Disclaimer: The information shown is intended to be used for general display only and is not to be used as an official map.
0
1.25
2.5
Miles
N
Annexation Area
Lake Arrowhead CSD Sphere of Influence
Lake Arrowhead CSD
City of Hesperia
City of San Bernardino
Town of Apple Valley Sphere of Influence
City of Hesperia Sphere of Influence
Author: Hannah Larsen
Created: 08/10/2022

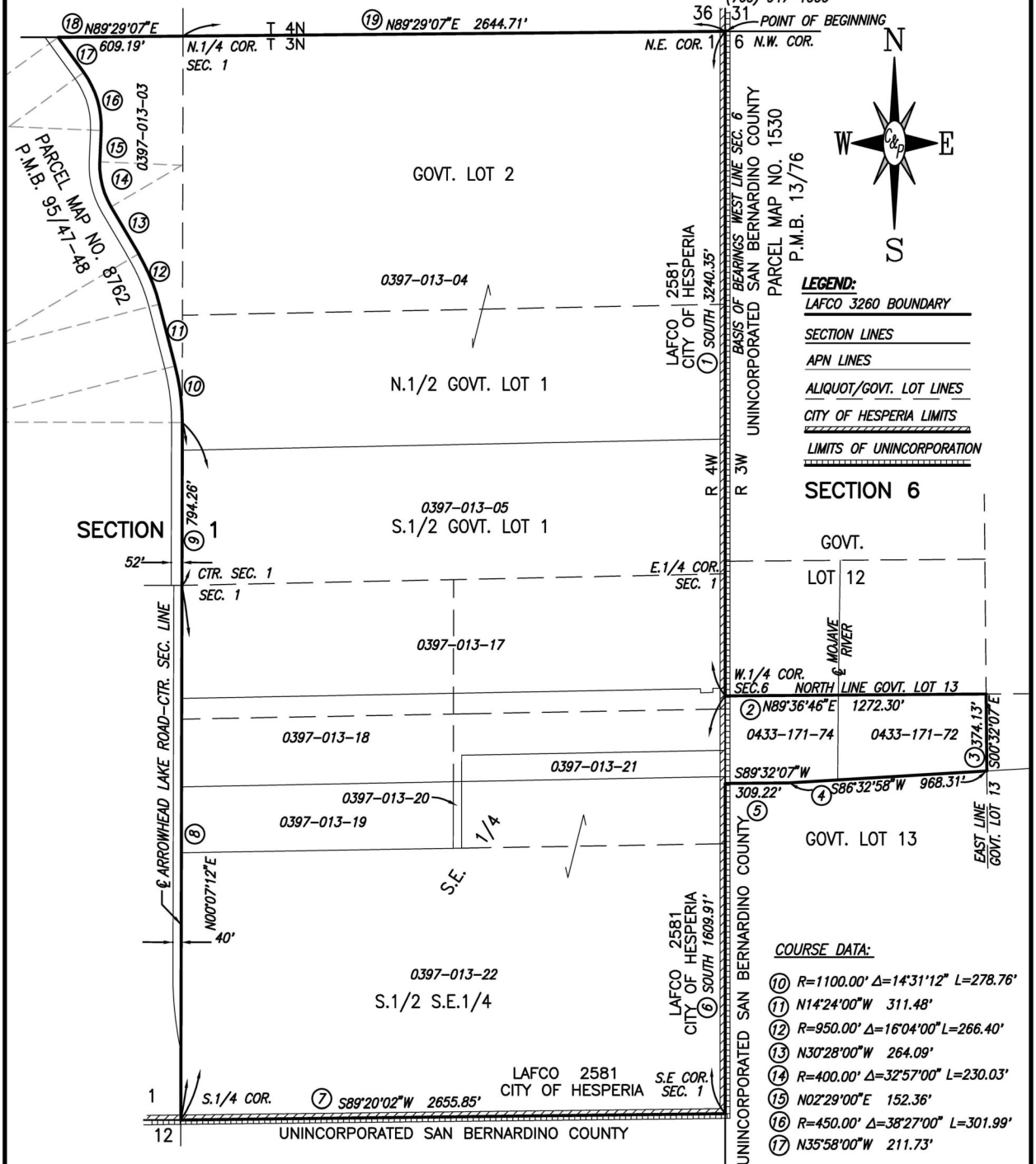

Detail Map
Town of Apple Valley Unincorporated Sphere of Influence
JUNIPER RD
TESUQUE RD
TARANGO RD
AERODOME RD
LAMPREY RD
PIEDMONT DR
ORO VIEW RD
CAROLYN AVE
CANARD AVE
RYLAND RD
DEEP CREEK RD
HAPPY VALLEY RD
ANNA MARIE RD
ROX RD
ARTISTIC ALY
CALPELLA AVE
SANDSTONE DR
PAMPAS DR
LAKESIDE CT
OLEANDER ST
Lake Arrowhead CSD Sphere of Influence
ARROWHEAD LAKE RD
LAFCO 3260
City of Hesperia
WHITEHAVEN ST
City of Hesperia Unincorporated Sphere of Influence
LAFCO 3260 - Annexation to the Lake Arrowhead Community Services District (Hesperia Farms Property - District-Owned)
Disclaimer: The information shown is intended to be used for general display only and is not to be used as an official map.
0 0.13 0.25 Miles
N
Annexation Area
Lake Arrowhead CSD Sphere of Influence
City of Hesperia
Town of Apple Valley Sphere of Influence
City of Hesperia Sphere of Influence
Author: Hannah Larsen Created: 08/10/2022

LAFCO 3260 – ANNEXATION TO THE LAKE ARROWHEAD COMMUNITY SERVICES DISTRICT

Hesperia Farms Property – District Owned

GENERAL DESCRIPTION: East of Arrowhead Lake Road/South of Hesperia Lake Park
344.39 Acres of Sec. 1, T.3N, R.4W & Sec. 6, T.3N, R.3W, S.B.M.

AFFECTED AGENCIES:
LAKE ARROWHEAD COMMUNITY SERVICES DISTRICT
P.O. BOX 700
LAKE ARROWHEAD, CA 92352
(909) 336-7100
CITY OF HESPERIA
9700 SEVENTH AVE.
HESPERIA, CA 92345
(760) 947-1000



COURSE DATA:

(10) R=1100.00' Δ=14°31'12" L=278.76'
(11) N14°24'00"W 311.48'
(12) R=950.00' Δ=16°04'00" L=266.40'
(13) N30°28'00"W 264.09'
(14) R=400.00' Δ=32°57'00" L=230.03'
(15) N02°29'00"E 152.36'
(16) R=450.00' Δ=38°27'00" L=301.99'
(17) N35°58'00"W 211.73'

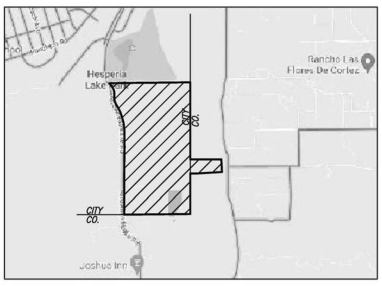
THIS MAP WAS PREPARED UNDER MY SUPERVISION, A LICENSED LAND SURVEYOR IN THE STATE OF CALIFORNIA.

DATE: MARCH 16, 2023

WM. STEPHEN CALKINS
P.L.S. 6890

PROFESSIONAL LAND SURVEYOR
WM. STEPHEN CALKINS
Exp. 06/30/23
PLS 6890
STATE OF CALIFORNIA

VICINITY MAP
N.T.S.



GRAPHIC SCALE

500 0 250 500 1000

(IN FEET)
1 inch = 500 ft.

(FOR LAFCO USE ONLY)

SAN BERNARDINO LAFCO
APPLICATION AND PRELIMINARY
ENVIRONMENTAL DESCRIPTION FORM

INTRODUCTION: The questions on this form and its supplements are designed to obtain enough data about the application to allow the San Bernardino LAFCO, its staff and others to adequately assess the proposal. By taking the time to fully respond to the questions on the forms, you can reduce the processing time for your proposal. You may also include any additional information which you believe is pertinent. Use additional sheets where necessary, or attach any relevant documents.

GENERAL INFORMATION

1. NAME OF PROPOSAL: Hesperia Farms Percolation Ponds and Solar Photovoltaic System

2. NAME OF APPLICANT: Lake Arrowhead Community Services District

   APPLICANT TYPE: ☑ Landowner ☑ Local Agency
   ☐ Registered Voter ☐ Other

   MAILING ADDRESS:
   P.O. Box 700
   Lake Arrowhead, California 92353

   PHONE: (909) 336-7100

   FAX: (909) 336-7172

   E-MAIL ADDRESS: ccerri@lakearrowheadcsd.com

3. GENERAL LOCATION OF PROPOSAL: Approximately 344 acres of vacant land located at 6727 Arrowhead Lake Road in the City of Hesperia, San Bernardino County. Please see Attachment for more information, including Assessor Parcel Numbers.

4. Does the application possess 100% written consent of each landowner in the subject territory?
   YES ☑ NO ☐ If YES, provide written authorization for change.

5. Indicate the reason(s) that the proposed action has been requested. Please see Attachment

(FOR LAFCO USE ONLY)

LAND USE AND DEVELOPMENT POTENTIAL

1. Total land area of subject territory (defined in acres):
   344 acres

2. Current dwelling units within area classified by type (single-family residential, multi-family [duplex, four-plex, 10-unit], apartments)
   2 single-family residences (both abandoned)

3. Approximate current population within area:
   0

4. Indicate the General Plan designation(s) of the affected city (if any) and uses permitted by this designation(s):
   Rural Residential

   San Bernardino County General Plan designation(s) and uses permitted by this designation(s):
   Floodway

5. Describe any special land use concerns expressed in the above plans. In addition, for a City Annexation or Reorganization, provide a discussion of the land use plan's consistency with the regional transportation plan as adopted pursuant to Government Code Section 65080 for the subject territory:
   Please see Attachment

6. Indicate the existing use of the subject territory.
   The Hesperia Farms Property is vacant land. It lies within the Mojave River watershed at the northern base of the San Bernardino mountains. LACSD uses it to discharge and percolate treated effluent into the Mojave River groundwater basin. San Bernardino County designates the common land use on each parcel as "electrical facility."

   What is the proposed land use?
   LACSD desires to continue its use of the percolation ponds while also moving forward with the construction of the Solar Project on a six-acre portion near the Hesperia Farms Property's southern border.

7. Will the proposal require public services from any agency or district which is currently operating at or near capacity (including sewer, water, police, fire, or schools)? YES ☐ NO ☑ If YES, please explain.

(FOR LAFCO USE ONLY)

8. On the following list, indicate if any portion of the territory contains the following by placing a checkmark next to the item:

☐ Agricultural Land Uses ☐ Agricultural Preserve Designation

☐ Williamson Act Contract ☐ Area where Special Permits are Required

☐ Any other unusual features of the area or permits required:

N/A

9. Provide a narrative response to the following factor of consideration as identified in §56668(p): *The extent to which the proposal will promote environmental justice. As used in this subdivision, "environmental justice" means the fair treatment of people of all races, cultures, and incomes with respect to the location of public facilities and the provision of public services:*

Please see Attachment.

ENVIRONMENTAL INFORMATION

1. Provide general description of topography.

Arid, vacant, high desert land at the northern base of the San Bernardino mountains, adjacent to the Mojave River.

2. Describe any existing improvements on the subject territory as % of total area.

Residential	0 %	Agricultural	0 %
Commercial	0 %	Vacant	100 %
Industrial	0 %	Other	0 %

3. Describe the surrounding land uses:

NORTH: Hesperia Lakes Park

EAST: Mojave River/ vacant land (percolation ponds)

SOUTH: San Bernardino mountains

WEST: Arrowhead Lake Road

4. Describe site alterations that will be produced by improvement projects associated with this proposed action (installation of water facilities, sewer facilities, grading, flow channelization, etc.).

Please see Attachment.

(FOR LAFCO USE ONLY)

5. Will service extensions accomplished by this proposal induce growth on this site? YES ☐ NO ☑ Adjacent sites? YES ☐ NO ☐ Unincorporated ☐ Incorporated ☐

6. Are there any existing out-of-agency service contracts/agreements within the area? YES ☐ NO ☑ If YES, please identify.

7. Is this proposal a part of a larger project or series of projects? YES ☐ NO ☑ If YES, please explain.

NOTICES

Please provide the names and addresses of persons who are to be furnished mailed notice of the hearing(s) and receive copies of the agenda and staff report.

NAME _____ TELEPHONE NO. _____

ADDRESS:

_____

NAME _____ TELEPHONE NO. _____

ADDRESS:

_____

NAME _____ TELEPHONE NO. _____

ADDRESS:

_____

CERTIFICATION

As a part of this application, the City/Town of _____, or the Lake Arrowhead Community Services District District/Agency, _____ (the applicant) and/or the _____ (real party in interest - landowner and/or registered voter of the application subject property) agree to defend, indemnify, hold harmless, promptly reimburse San Bernardino LAFCO for all reasonable expenses and attorney fees,

(FOR LAFCO USE ONLY)

and release San Bernardino LAFCO, its agents, officers, attorneys, and employees from any claim, action, proceeding brought against any of them, the purpose of which is to attack, set aside, void, or annul the approval of this application or adoption of the environmental document which accompanies it.

This indemnification obligation shall include, but not be limited to, damages, penalties, fines and other costs imposed upon or incurred by San Bernardino LAFCO should San Bernardino LAFCO be named as a party in any litigation or administrative proceeding in connection with this application.

As the person signing this application, I will be considered the proponent for the proposed action(s) and will receive all related notices and other communications. I understand that if this application is approved, the Commission will impose a condition requiring the applicant and/or the real party in interest to indemnify, hold harmless and reimburse the Commission for all legal actions that might be initiated as a result of that approval.

I hereby certify that the statements furnished above and in the attached supplements and exhibits present the data and information required for this initial evaluation to the best of my ability, and that the facts, statements, and information presented herein are true and correct to the best of my knowledge and belief.

DATE 9/8/2022

SIGNATURE

Lake Arrowhead Community Services District

Printed Name of Applicant or Real Property in Interest
(Landowner/Registered Voter of the Application Subject Property)

General Manager

Title and Affiliation (if applicable)

PLEASE CHECK SUPPLEMENTAL FORMS ATTACHED:

- [x] ANNEXATION, DETACHMENT, REORGANIZATION SUPPLEMENT
- [ ] SPHERE OF INFLUENCE CHANGE SUPPLEMENT
- [ ] CITY INCORPORATION SUPPLEMENT
- [ ] FORMATION OF A SPECIAL DISTRICT SUPPLEMENT
- [ ] ACTIVATION OR DIVESTITURE OF FUNCTIONS AND/OR SERVICES FOR SPECIAL DISTRICTS SUPPLEMENT

Lake Arrowhead Community Services District

Hesperia Farms Property – Application and Preliminary Environmental Description Form

Attachment

General Information

3. ***Assessor Parcel Numbers***

- 0397-013-03
- 0397-013-04
- 0397-013-05
- 0397-013-17
- 0397-013-18
- 0397-013-19
- 0397-013-20
- 0397-013-21
- 0397-013-22
- 0433-171-72
- 0433-171-74

5. ***District and Hesperia Farms Background.*** Lake Arrowhead Community Services District (the "District") is located atop the San Bernardino Mountains. At 5,100 feet above sea level, it serves approximately 8,000 water customers and 10,500 wastewater customers within the Lake Arrowhead community, from Rim Forest to Deer Lodge Park to Cedar Glen. The District operates two water treatment plants, 19 water pumping stations, two wastewater treatment plants, 21 wastewater pumping stations, 20 reservoir tanks, and several hundred miles of pipelines. It was formed in 1978 by residents of Lake Arrowhead to purchase the privately-owned water system servicing Arrowhead Woods and the surrounding communities.

Over the years, the District's service area was expanded several times, most significantly through the annexation of the Lake Arrowhead Sanitation District (the "Sanitation District"), which added wastewater services to the District's portfolio. In 1976, the Sanitation District had acquired a 344-acre property located at 6727 Arrowhead Lake Road (the "Hesperia Farms Property") in the City of Hesperia (the "City") for disposing treated effluent. The District acquired title to the Hesperia Farms Property through annexation of the Sanitation District.

The Hesperia Farms Property lies at the base of the northern side of the San Bernardino Mountains. The District treats wastewater at its Willow Creek and Grass Valley treatment plants, respectively, and disposes of the wastewater in the Hesperia Farms Property's percolation ponds, which allows it to percolate into the Mojave River groundwater basin. The Hesperia Farms Property contains percolation ponds in which approximately 1,500 acre-feet of effluent treated by the District is disposed annually. The District has the legal authority to treat and dispose of wastewater in the same manner as a sanitary district pursuant to Government Code section 61100(b).

The District has intended to annex the Hesperia Farms Property for decades. In fact, in 2010, at the District's request, the Local Agency Formation Commission for San Bernardino County ("LAFCO") expanded the District's sphere of influence (which, to that point, had been coterminous with its water and wastewater service area) to include the Hesperia Farms Property. In its report recommending the change, LAFCO staff found:

> *The properties are owned by [the District] which it uses for effluent disposal and agricultural production. Since the territory is outside the boundaries of the District it pays ad valorem property taxes. As a cost savings measure, if [the District] were to annex these parcels and continue its existing use, it could file for removal from the tax roll as an exempt property and eliminate the financial obligation for payment of ad valorem property tax.*

The report further stated, "[The District] was envisioned to provide more than water and sewer service. It was intended to become the focal government organization for the community." Receiving no objections from any party (including the City), LAFCO expanded the District's sphere of influence to include the Hesperia Farms Property.

The District intends to continue its water percolation activities at the Hesperia Farms Property.

Annexation of the Hesperia Farms Property will exempt the District from property taxes, which will result in significant cost savings to the District and its customers.

Land Use and Development Potential

5. The District is not aware of any land use concerns related to the continued used of the Hesperia Farms Property for its percolation ponds.

In September 2020, the City filed a Petition for Writ of Mandate and Complaint entitled *City of Hesperia v. Lake Arrowhead Community Services District et al*., San Bernardino Superior Court, Case No. CIVDS 2019176, challenging the District's June 2020 determination that the City's zoning ordinances were inapplicable to the Hesperia Farms Property under Government Code section 53096. Judgment was entered in favor of the District by the trial court on March 8, 2022. (*See*, Exhibit 1.) The City appealed the ruling and the Court of Appeal ruled in the District's favor on July 12, 2023. (*See*, Exhibit 2.)

9. The Hesperia Farms Property is vacant land, with only a few abandoned buildings and no people residing thereon. It is located at the northern base of the San Bernardino Mountains, near the Mojave River, and has been used by the District to store treated wastewater for nearly 50 years. The District wishes to annex the Hesperia Farms Property for the reasons asserted by LAFCO in 2010 in determining it should be part of the District's sphere of influence. The abandoned buildings are outside the footprint of both the percolation ponds; moreover, at its May 24, 2022, Board meeting, the District awarded a contract for the removal of the buildings and they were subsequently removed. The annexation will result in minimal impacts to adjacent land uses.

Environmental Information

4. The District's continuing use of the Hesperia Farms Property for its percolation ponds, regardless of whether the Hesperia Farms Property is annexed, is not a physical change to the environment within the purview of CEQA. (14 Cal. Code Regs. ("State CEQA Guidelines"), § 15378.) Further, annexation to a special district of areas containing existing public or private structures developed to the density allowed by current zoning is exempt from environmental review under Class 19, State CEQA Guidelines section 15319.

EXHIBIT 1

COPY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAR 08 2022

BY JESSICA MORALES, DEPUTY

EXEMPT FROM FILING FEES PURSUANT TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

CITY OF HESPERIA,

Petitioner and Plaintiff,

v.

LAKE ARROWHEAD COMMUNITY SERVICES DISTRICT, a public body corporate and politic; BOARD OF DIRECTORS OF LAKE ARROWHEAD COMMUNITY SERVICES DISTRICT; DOES 1 through 50, Inclusive,

Respondent and Defendant.

SOUTHERN CALIFORNIA EDISON; SUNPOWER CORPORATION, SYSTEMS; and STIFEL, NICOLAUS & COMPANY, INCORPORATED,

Real Parties in Interest.

Case No. CIVDS2019176

Case filed under California Environmental Quality Act (CEQA)

[~~PROPOSED~~] JUDGMENT DENYING PETITION FOR WRIT OF MANDATE AND CAUSES OF ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF

Judge: Hon. David Cohn
Dept.: S26 (assigned for all purposes)

Action Filed: September 1, 2020
Trial Date: September 3, 2021

On September 3, 2021, the Petition for Writ of Mandate ("Petition") of Petitioner and Plaintiff, City of Hesperia, a municipal corporation, ("City"), came on regularly for hearing before the Honorable David Cohn in Department S26 of the above-captioned court. Petitioner and Plaintiff, City, was represented by Eric L Dunn, June S. Ailin, and Nicholas P. Dwyer of the law firm of Aleshire & Wynder, LLP. Respondents and Defendants, Lake Arrowhead Community Services District, a public body corporate and politic, Board of Directors of Lake Arrowhead Community Services District (collectively referred to as "District"), were represented by Lindsay D. Puckett and Andrew Skanchy of the law firm of Best Best & Krieger LLP. Real party in interest Sunpower Corporation Systems was represented by Emily L. Murray of the law firm Allen Matkins Leck Gamble Mallory & Natsis.

The Administrative Record consisting of four bankers boxes and an electronic copy on one thumb drive with the Administrative Index and documents 1-114 (bates range AR 1 – AR 9447), along with the certified Administrative Record in the case entitled *City of Hesperia v. Lake Arrowhead Community Services District et al.*, San Bernardino County Superior Court Case No. CIVDS1602017, consisting of tabs 1 – 81 (bates ranges AR0001-AR2812), was admitted into evidence. In addition, the City and the District each lodged their own administrative record citation binders.

The court having read and considered the Administrative Record, the supporting and opposing points and authorities, declarations and exhibits, and having considered the arguments of counsel, rules as follows:

IT IS HEREBY ORDERED ADJUDGED AND DECREED THAT:

1. The City's Request for Judicial Notice, filed on January 27, 2021, of the following documents was granted: (1) Hesperia Municipal Code section 16.16.060; (2) *City of Hesperia v. Lake Arrowhead Community Services District*, San Bernardino County Superior Court Case No. CIVDS1602017, Judgment Nunc Pro Tunc Denying in Part and Granting in Part Petition for Writ of Mandate, filed February 17, 2017; and (3) California Bill Analysis Senate Committee, 2015-2016 Regular Session, Assembly Bill 1773, Hearing Date June 21, 2016. The City's Request for Judicial Notice of the following documents was denied: (1) Lake Arrowhead Community

Services District memoranda regarding contracting with Tidewater Incorporated; and (2) United States Army Corps of Engineers, Los Angeles District, News Release, published November 1, 2019, titled Army Corps reclassifies Mojave River Dam Risk Characterization.

2. The District's Request for Judicial Notice, filed on March 16, 2021, of the following documents was granted: (1) Resolution No. 3117 – A Resolution of the Local Agency Formation Commission of the County of San Bernardino Making Determinations on LAFCO 3110 – A Service Review and Sphere of Influence Update for the Lake Arrowhead Community Services District and (2) the California Natural Resources Agency Final Statement of Reasons for Regulatory Action Amendments to the State CEQA Guidelines OAL Notice File No. Z-2018-0116-12 and the text amendments to the 2018 State CEQA Guidelines, dated November 2018.

3. The City's Verified Petition for Writ of Mandate is denied and judgment is entered for the District on the Petition and the derivative causes of action for declaratory and injunctive relief.

4. The grounds for the court's decision are set forth in the Ruling on Submitted Matter: Petition for Writ of Mandate Denied ("Final Ruling"), filed and served by mail on September 16, 2021, which is attached to this Judgment as Exhibit 1. The Final Ruling references and attaches the court's Tentative Ruling, dated July 12, 2021, as Exhibit A to the Final Ruling.

5. The District shall recover from the City its costs incurred in these proceedings.

Dated: 3.8.22

DAVID COHN

Judge of the Superior Court

APPROVED AS TO FORM:

Dated: October 1, 2021

ALESHIRE & WYNDER, LLP

By: _____

ERIC L. DUNN
JUNE S. AILIN
NICHOLAS P. DWYER
Attorneys for Petitioner and Plaintiff
CITY OF HESPERIA

Dated: October 1, 2021

BEST BEST & KRIEGER LLP

By: _____

LINDSAY D. PUCKETT
ANDREW M. SKANCHY
Attorneys for Respondents and Defendants
LAKE ARROWHEAD COMMUNITY SERVICES DISTRICT and BOARD OF DIRECTORS OF LAKE ARROWHEAD COMMUNITY SERVICES DISTRICT

Dated: October 1, 2021

ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP

By: _____

EMILY L. MURRAY
Attorneys for Real Party In Interest
SUNPOWER CORPORATION SYSTEMS

EXHIBIT 1

Superior Court of California
County of San Bernardino
247 W. Third Street, Dept. S26
San Bernardino, California 92415-0210

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

SEP 16 2021

BY _____
JESSICA MORALES, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT

City of Hesperia, a municipal corporation,

Petitioner and Plaintiff,

Lake Arrowhead Community Services District, a public body corporate and politic, Board of Directors of Lake Arrowhead Community Services District; and DOES 1 through 50, inclusive,

Respondent and Defendant.

Southern California Edison; Sunpower Corporation Systems; and Stiffel, Nicolaus & Company, Incorporated

Real Parties in Interest.

Case No.: CIVDS2019176

RULING ON SUBMITTED MATTER:

PETITION FOR WRIT OF MANDATE DENIED

Hearing Date: September 3, 2021
Dept: S-26, Judge David Cohn

I

Introduction

Petitioner City of Hesperia (the "City") seeks a writ of mandate to prevent Respondent Lake Arrowhead Community Services District (the "District")[1] from building a solar energy project on land the District owns in an area of the City known as Hesperia Farms. The City contends the project violates the City's general plan and zoning ordinances. The District, however, contends it is statutorily exempt from compliance pursuant to Government Code section 53096, subdivision (a), which provides an exemption for projects related to the "storage or transmission" of electricity when there is "no feasible alternative."

The project is intended to generate electricity pursuant to the Local Government Renewable Energy Self-Generation Bill Credit Transfer program ("RES-BCT"),[2] which allows local governments, under specified circumstances, to generate electricity on one site, export it to the electrical grid, and apply the resulting energy credits against electricity bills incurred on a different site. (Pub. Util. Code, § 2830.) To comply with the requirement for exemption from the City's general plan and zoning ordinances, the District determined that there is "no feasible alternative" to the Hesperia Farms site, because other sites would not be suitable for the District's intended purpose—generating electricity under the RES-BCT program.

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[1] The Board of Directors of Lake Arrowhead Community Service District is named as an additional respondent.

[2] The acronym RES-BCT is used with due respect to Aretha Franklin and her anthem, RESPECT.

A. The Original *Tentative* Ruling

The court's tentative ruling, filed July 12, 2021, was to *grant* the City's petition on the ground that the District's premise underlying the selection of the site in Hesperia Farms—that the site qualified for the RES-BCT program—was mistaken. The court tentatively found that the site did not qualify for the program because it is not located "within the geographical boundary" of the District, as required by section 2830, subdivision (a)(4)(C). Although other sites were infeasible because they were unusable for the RES-BCT program, or for other reasons, the court determined that this site was *also* infeasible because it was not within the geographical boundary of the District. Therefore, the court tentatively found that the statutory exemption from the City's general plan and zoning ordinances did not apply. Accordingly, the court's original tentative ruling was to *grant* the City's petition for a writ of mandate.[3] After oral argument, however, the court continued the hearing to allow further briefing on several issues.

B. The Revised Ruling After Further Briefing and Argument

The parties submitted supplemental briefing, and the court held a further hearing on September 3, 2021. With one exception, the additional arguments are unpersuasive for a different ruling from the tentative. As explained below, however, the court finds that the City is barred by the doctrine of laches from relying on an argument that the site does not qualify for the RES-BCT program. Accordingly, the court's ruling is to *deny* the petition.

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[3] Other grounds for the petition were denied. While the tentative ruling's conclusion on page 33 erroneously stated that the petition was denied, the caption properly reflected a tentative decision to grant based on the RES-BCT issue.

II

Background

A. The Former Version of the Project

In 2016, the City brought a similar writ petition challenging an *earlier* decision by the District to approve a *similar* solar project in the same general area. (*City of Hesperia v. Lake Arrowhead Community Services District et al.*, San Bernardino County Superior Court Case No. CIVDS1602017.) As in this case, the City contended that the project did not comply with the City's general plan and zoning ordinances. Also as in the case, the District contended that the project was statutorily exempt from compliance. The trial court agreed with the City and granted the petition. The Court of Appeal affirmed the judgment in *City of Hesperia v. Lake Arrowhead Community Services District* (2019) 37 Cal.App.5th 734, finding that the project was not exempt from the City's general plan and zoning ordinances.

The Court of Appeal began its analysis with the observation that "the Legislature has attempted to achieve a balance between the state's interest in allowing local agencies to produce, generate, store, and transmit water or electrical energy and the cities' and counties' control over local building and zoning." (*City of Hesperia, supra,* at p. 739.) The specific issue before the Court was whether the District's solar project was "exempt from—or whether the District must comply with—the zoning ordinances" of the City. (*Ibid.*) The Court summarized the statutory scheme, which balances the competing interests:

> Our analysis begins with the statutory requirement that, for purposes of a proposed solar energy project, a local agency must comply with the zoning ordinances of the city and county in which the project's facilities are to be constructed

> or located. (Gov. Code, § 53091, subd. (a) ....) Then, as potentially applicable here, section 53091, subdivision (e) (§ 53091(e)), and section 53096, subdivision (a) (§ 53096(a)), each provides the agency with an exemption for the location and construction of certain types of facilities. Section 53091(e) provides an *absolute exemption* for "the location or construction of facilities ... for the production or generation of electrical energy"—unless the facilities are "for the storage or transmission of electrical energy," in which event the zoning ordinances apply. Section 53096(a) provides a *qualified exemption* for an agency's proposed use upon, first, a showing that the development is for facilities "related to storage or transmission of water or electrical energy" and, second, a resolution by four-fifths of the agency's members that "there is no feasible alternative to [the agency's] proposal."

(*City of Hesperia, supra,* 37 Cal.App.5th at pp. 739-740, italics in original.)

Although the parties agreed that the project qualified as a solar farm under Hesperia Municipal Code ("HMC") section 16.16.063, which addresses "[a]lternative energy technology standards," the *zoning* of the property presented an obstruction. HMC section 16.16.063.B, provides:

> Solar farms shall only be allowed on *nonresidential and nonagricultural designated properties* with approval of a conditional use permit by the planning commission. Solar farms *shall not be permitted within six hundred sixty (660) feet* of a railway, spur, any interstate, highway, or major arterial, arterial, or secondary arterial roadway; *or any agricultural or residentially designated property.*

(AR 76:6892, italics added.)

The property where the District intended to build the project was zoned "Rural Residential," and the solar project was to be located within 660 feet of property to the south, zoned for agricultural use. (*City of Hesperia, supra,* at pp. 741-742.) Therefore, the project was prohibited under HMC section 16.16.063.B, unless an exemption applied—either the absolute exemption under Government Code section 53091,

subdivision (e), or the qualified exemption under Government Code section 53096, subdivision (a).

Attempting to address this problem, the District adopted a Resolution determining that the project met the criteria for both the absolute exemption and the qualified exemption. First, the District found that the absolute exemption applied because the District was a generator of electricity. Second, the District found that the qualified exemption applied because there was "no feasible alternative" to the location of the project. (*City of Hesperia, supra,* 37 Cal.App.5th at pp. 743-744.)

The City sued and the trial court found that the proposed project did not fall within the absolute exemption, because the project included the *transmission* of electrical energy, which is excluded from the exemption provided by section 53091, subdivision (e), for generation or production of electrical energy. The trial court also found that the qualified exemption based on infeasibility was not supported by substantial evidence. Therefore, the trial court found that the project was not exempt from the City's general plan and zoning ordinances.

The District appealed.

In 2017, the parties agreed to stay the appeal while the District applied for a General Plan Amendment to change the land use designation of Hesperia Farms to Public (i.e., not Rural Residential) and for approval of a Conditional Use Permit ("CUP") to construct a solar farm on the property. (AR 4:20-21; AR 36:2568-2569; AR 44:3121-3123.) The project was the same as the original version except for moving it 660 feet to the north to comply with HMC section 16.16.063.B (prohibiting solar projects within 660 feet of property zoned for agricultural use). If the City granted the District's application, the issues on appeal would be moot and the project could go forward.

On January 16, 2018, however, the City denied the District's applications and on March 20, 2018, adopted Resolution No. 2018-09, denying the General Plan Amendment, and adopted Resolution No. 2018-10, denying the CUP. (AR 51:4160; AR 61:4292-4296; AR 62:4297-4300.)

The District did not challenge the City's denials. Instead, the appeal proceeded, resulting in the *City of Hesperia* decision in favor of the City, filed July 19, 2019.[4]

The appellate court affirmed the trial court's ruling that the proposed project did not fall within the *absolute* exemption because the project included the *transmission* of electrical energy. (*City of Hesperia, supra,* at pp. 740, 749-759.) The appellate court also affirmed the trial court's conclusion that the proposed project did not fall within the *qualified* exemption, because substantial evidence did not support the District's conclusion that there was "no feasible alternative" to the location chosen for the project. (*City of Hesperia, supra,* at pp. 740, 760-766.) In determining feasibility, the Court found guidance in the application of feasible alternatives and feasible mitigation measures in the California Environmental Quality Act, Public Resources Code section 21000 *et seq.* ("CEQA"). (*City of Hesperia, supra,* at pp. 762-764, 767.)

B. The Current Version of the Project

Shortly after the appellate court issued its ruling, the District arranged for consultants to prepare two technical reports, which had not been prepared for the original project. The first was entitled RES-BCT Project Review (the "Sage Report"). The second was entitled Technical Memorandum for Feasibility Evaluation of Potential Photovoltaic System Sites (the "Tidewater Memorandum"). Based on these studies, the

[4] The appeal considered the project as *originally* conceived, located within 660 feet of agriculturally designated property. (*City of Hesperia, supra,* at p. 742.)

District's staff prepared a report entitled "Alternatives to Proposed Solar Photovoltaic System on Hesperia Farms Property (the "Alternatives Report").

On June 23, 2020, the District held a public hearing on the solar project as it was described in the earlier General Plan and CUP applications, which the City had denied. The District then adopted Resolution 2020-04, finding that there is *no feasible alternative* to the proposed project, pursuant to the qualified exemption of Government Code section 53096. (AR 3:11-14.) The Resolution stated:

> The District's determination is based on [the] Alternatives Report, including but not limited to the Tidewater Memorandum and the Sage Report, and the remaining administrative record for such determination, the District's approval of the Original Site, and the District's approval of the Alternative Site (the Proposal).

(*Id.* at p. 12.) The Resolution found that the District's determination rendered the City's general plan and zoning ordinances inapplicable based on the newly supported qualified exemption. (*Ibid.*)

The City, however, contends that the District's determination that it is statutorily exempt from compliance with the City's general plan and zoning ordinances is still invalid because the site does not qualify for the RES-BCT program and because the District's determination is unsupported by substantial evidence in other respects as well.

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III

The City's Argument that the Project Does not Qualify for the RES-BCT Program is Barred by the Doctrine of Laches.[5]

A. Unreasonable Delay and Prejudice Supports the District's Laches Defense.

The District asserts that laches bars the City's challenge to its right to use the Hesperia Farms property under the RES-BCT program. It argues that it is prejudiced by the City's five-year delay in asserting that the site does not qualify for the RES-BCT program because the District incurred substantial financial resources and further delay in considering alternative project sites under Government Code section 53096. The District reasonably believed that if it satisfied the alternatives analysis, the project could be built. In support, the District cites the June 2020 report that the District made reasonable efforts to reach a resolution with the City regarding the project. (AR 4:20-21.) It also cites the Tidewater Cost Proposal that discloses $14,874.80 was spent on Tidewater's feasibility analysis. (AR 90:7656-7659.)

The City argues that it submitted a comment letter before the June 2020 hearing on the solar project and timely filed its challenge. Therefore, the City argues, the suit was not a surprise and there was no unreasonable delay in taking legal action. It also contends that there is no prejudice because after the appellate decision, the District still needed to comply with the City's zoning or conduct an alternatives analysis. Therefore, there was no material change in the *status quo*. Finally, it argues that the mere expenditure of money or effort is insufficient to show prejudice.

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[5] The court's analysis of the RES-BCT program, absent the application of laches, is set forth in the court's original tentative ruling. The court has not altered its opinion of the statutory requirements for the program as set forth in the tentative ruling. (Tent. Ruling, pp. 8-11.) Rather, the court simply finds that the City cannot challenge it at this late stage.

"A plaintiff who has unduly delayed seeking equitable relief to the prejudice of a defendant may be barred by the doctrine of laches. Administrative mandamus is a proceeding in which equitable principles are applicable and in which the defense of laches may be invoked. Laches is ordinarily a question of fact, and the trial court exercises considerable discretion in deciding whether the defense should be sustained. (*Concerned Citizens of Palm Desert v. Bd. of Supervisors* (1974) 38 Cal.App.3d 257, 265, citations omitted.)

> It is well-established doctrine that the defense of laches does not rest entirely upon lapse of time, nor require any specific period of delay, as does the statute of limitations. In order to constitute laches, there must be something more than mere delay by the plaintiff, accompanied by an expenditure of money or effort on the part of the defendant. It must also appear that it will be inequitable to enforce the claim. "The reason upon which the rule is based is not alone the lapse of time during which the neglect to enforce the right has existed, but the changes of condition which may have arisen during the period in which there has been neglect." It is said that the cases on the subject "proceed on the assumption that the party to whom laches is imputed has knowledge of his rights and an ample opportunity to establish them in the proper forum; that by reason of his delay the adverse party has good reason to believe that the alleged rights are worthless or have been abandoned; and that, because of the change in conditions during this period of delay, it would be an injustice to the latter to permit the" claimant now to assert his rights. *The acquiescence which will bar a complainant* from the exercise in his favor of the discretionary jurisdiction by injunction must be such as proves his assent to the acts of the defendant, and to the injuries to himself which have flowed, or can reasonably be anticipated to flow, from those acts."

(*Verdugo Canon Water Co. v. Verdugo* (1908) 152 Cal. 655, 674-675, citations omitted.)

In *Holt v. County of Monterey* (1982) 128 Cal.App.3d 797, at issue was a development that developers first applied for in January 1975. The county approved the specific plan for the project in January 1977. In June 1979, plaintiff filed his lawsuit after

the county granted the use permit and approval of the tentative subdivision map in March 1979. Plaintiff sought to have the specific plan adopted in 1977, and the more recent approvals set aside based on the county's failure to establish an adequate general plan. The Court noted that during the period between the January 1977 approval and the June 1979 lawsuit, the developers had expended over $4 million in development costs in reliance on the county's earlier approval of the plan. It affirmed the trial court's finding of laches in which the trial court found: (1) plaintiff knew of the project as early as 1976, (2) the delay of over two and one-half years before instituting the lawsuit was unreasonable, and (3) the developers substantially and justifiably relied to their detriment on the adoption of the specific plan. (*Id.* at pp. 799-801.)

When the circumstances of the history of the project, including the prior litigation, are considered, the City has unreasonably delayed raising the issue that the Hesperia Farms site does not qualify for the RES-BCT program to the prejudice of the District.

The City was aware of the District's intent to proceed under the RES-BCT program to construct the solar project on the Hesperia Farms site since at least November 18, 2014, when District staff met with the City Manager and the Planning Department to discuss the solar facility. (AR 4:19.) In August 2015, the District entered into the agreement with Southern California Edison (SCE) to export electricity energy under the RES-BCT program. (AR 26:1777-1838.) In December 2015, the District determined it qualified for the absolute exemption under Government Code section 53091, and the project fell within the qualified exemption under section 53096. The City filed suit in February 2016. (AR 4:19-20.) The history of that litigation is detailed in this Ruling and the Tentative Ruling, attached as Exhibit A for reference. The 2016 action,

despite settlement attempts, continued until July 19, 2019, when the appellate court issued its decision. (AR 4:20.)

Although the specific issue of the site's eligibility was not raised to the trial court, the City was aware of the issue and could have raised it as evidenced by its argument submitted on appeal. (AR 64:4390-4391.) In its opposition to the District's appeal, the City asserted that the District's project does not fall within the scope of the RES-BCT program because the solar farm is not within the geographical boundaries of the District. (AR 64:4390-4391.) On reply, the District argued that the City was raising this issue for the first time on appeal. (AR 65:4434-4435.) The appellate decision did not discuss the City's eligibility argument.[6]

The City argues here that there was no material change in the *status quo* because the District still needed to conduct the alternative analysis. But the City offers no explanation for the delay in raising the eligibility issue that could have been raised and addressed as part of the 2016 litigation. The trial court's decision in the 2016 action noted that the City did not offer any argument that the project did not satisfy the requirements of the RES-BCT program under Public Utilities Code section 2830. (City's RJN Exh. B, pp. 5-6.)

By failing to raise the issue earlier, the District has been prejudiced in treating the solar project under the RES-BCT program at the Hesperia Farms site as feasible, with the only issue being whether substantial evidence supported a finding that there was "no feasible alternative" to that location under Government Code section 53096.

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[6] The general rule is that issues raised for the first time on appeal are deemed waived, which rule the appellate court has discretion to apply. (*Franz v. Board of Medical Quality Assurance* (1982) 31 Cal.3d 124, 143; *Redevelopment Agency v. City of Berkeley* (1978) 80 Cal.App.3d 158, 167.)

Therefore, the court finds that the City's argument that the District is ineligible for the RES-BCT program, while based on correct statutory interpretation, is barred by the doctrine of laches.[7]

IV

The City's Other Grounds for Challenging the Feasibility Finding are Unsupported.

A. *City of Hesperia* Requires a Consideration of Alternative Locations.

As discussed above, Government Code section 53091, subdivision (a), provides: "Each local agency shall comply with all applicable building ordinances and zoning ordinances of the county or city in which the territory of the local agency is situated." Also discussed above, Government Code section 53096, subdivision (a), provides a qualified exemption for a local agency's use of property for facilities "related to storage or transmission of ... electrical energy" when there is no "feasible alternative."

City of Hesperia considered CEQA as "guidance" for analyzing the definition of "feasible" in section 53096, subdivision (c), given the lack of other authority.[8] (*City of Hesperia, supra,* 37 Cal.App.5th at p. 762.) Under CEQA, "'[t]he range of alternatives is governed by the "rule of reason," which requires only an analysis of those alternatives necessary to permit a reasoned choice. An [environmental impact report] need not consider an alternative, the effect of which cannot be reasonably ascertained and the implementation of which is remote and speculative.'" (*Id.* at p. 763, quoting *Citizens of*

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[7] The District also argues that collateral estoppel applies. But the issue whether the Hesperia Farms property qualified for the RES-BCT program under Public Utilities Code section 2830 was never litigated before the trial court. It was raised on appeal, but was not addressed by the appellate court. The District failed to present sufficient argument to demonstrate that collateral estoppel applies.

[8] "Feasible" means "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (Gov. Code, § 53096, subd. (c).)

Goleta Valley v. Board of Supervisors (1988) 197 Cal.App.3d 1167, 1177-1178, fn. omitted in original.)

As under CEQA, for purposes of section 53096, the "'rule of reason' *requires* consideration of alternatives." (*Ibid.*) *City of Hesperia* found:

> For section 53096(a)'s qualified exemption to apply, section 53096, subdivision (c)'s definition of "feasible" requires the necessary finding to be there is no alternative to the agency's proposal that is "capable of being accomplished in a successful manner within a reasonable period of time"; and that necessary finding must be supported by substantial evidence of the "economic, environmental, social, and technological factors."

(*City of Hesperia, supra,* at p. 764.) The court stated:

> [I]n order for the District to have properly determined that "there is no feasible alternative" to the proposed location of the Solar Project for purposes of section 53096(a), the District was required to have: (1) considered alternative locations; (2) taken into account economic, environmental, social, and technological factors associated with both the Project Site and the alternative locations; and (3) determined—i.e., exercised discretion based on substantial evidence in the administrative record—that, at the alternative locations, the proposal was not capable of being accomplished in a successful manner within a reasonable period of time.

(*Id.* at p. 767.) Therefore, under *City of Hesperia*, this is the standard to apply when determining whether substantial evidence supports the District's feasibility finding.[9]

B. The District's Purpose in Choosing the Project Site is Irrelevant.

In *City of Lafayette v. East Bay Municipal District* (1993) 16 Cal.App.4th 1005, 1017, the Court wrote:

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[9] The District's argument that "even under CEQA an agency is not required to provide the public with an opportunity to review and comment or debate an agency's economic feasibility analysis" (Opp. Br. p. 21:7-9, citing *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1505-1506), is irrelevant. Government Code section 53096, subdivision (a), requires a public hearing with at least ten days' notice.

> The primary objective of the statutory scheme is to maintain local control of land use decisions (§ 53091), with carefully specified exceptions where necessary to *further countervailing interests.*

(Italics added.)[10]

Relying on *Lafayette*, the City argues that the project does not "further countervailing interests" such as placing water or electricity facilities that are necessary and indispensable to the agency's authorized functions, because the District's *purpose* in building the project is merely to reduce its own electricity costs.

This argument directed to the agency's purpose was previously rejected in *City of Hesperia* in connection with the Court's discussion of the absolute exemption. The Court found, contrary to the City's argument, that the exemption is based "on the purpose of *the proposed facilities*, not ... on the purpose of *the agency developing the proposed facilities*." (*City of Hesperia, supra,* at p. 755, italics in original; footnote omitted.) The City argued that the exemption should not apply because the project was not "integral" or "directly related" to the District's authorized function to provide water and wastewater treatment. The Court found this to be irrelevant to the application of the absolute exemption.

The City fails to provide any different analysis for the qualified exemption that would distinguish it from the argument already rejected by the Court of Appeal in connection with the absolute exemption. The project is related to the transmission of electrical energy to which section 53096 applies. The District's *purpose* for the project is irrelevant. This ground for a writ is denied.

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[10] *Lafayette* addressed the legislative intent of the statutory scheme with respect to *water*. *City of Hesperia* found the same legislative intent when "proposed facilities are for the production or generation of *electrical energy*." (*City of Hesperia, supra*, at p. 752, italics in original.)

C. Procedures Under CEQA are Irrelevant to the Alternatives Analysis.

The City argues that the alternatives standards under CEQA, including the time given to review and comment on a draft Environmental Impact Report ("EIR"), should apply to the alternatives analysis under Government Code section 53096. This argument apparently relates to a claimed *procedural* defect in the District's proceedings—that it did not proceed as it would proceed under CEQA. "Where the alleged defect is that the agency has failed to proceed in the manner required by law, the court determines de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated requirements." (*Chico Advocates for a Responsible Economy v. City of Chico* (2019) 40 Cal.App.5th 839, 845, citation omitted.) Therefore, this court considers the argument de novo.

The City has failed to demonstrate that the CEQA requirements applicable to public notice and the notice period for review of an EIR are relevant to the notice period required for a hearing on the qualified exemption under section 53096. Section 53096, subdivision (a), sets forth the minimum public notice period of at least ten days. The District complied with the notice requirement. This ground for a writ is denied.

D. The Methodology Employed for the Analysis of Alternatives is Not Shown to be Inadequate.

Much of the City's argument about the District's feasibility determination amounts to a criticism of the parameters used in the Tidewater Memorandum, which the District's Alternatives Report relies on. The City complains that there is no evidence of the "analytic route the administrative agency traveled from evidence to action" in determining why the particular sites received the particular scores they received. The

City complains about the twenty parameters used, asserting that they are different from those used in studies of different solar projects that the Tidewater Memorandum referenced as a basis for the parameters. It argues that the large number of parameters used by Tidewater invites and facilitates manipulation.

The City's argument is insufficient to demonstrate that substantial evidence does not support the feasibility findings in light of the whole record. The City's burden is discuss *all* relevant evidence on the issue of the feasibility findings and to demonstrate that substantial evidence does not support the District's findings in light of the whole record. (*Latinos Unidos de Napa v. City of Napa* (2013) 221 Cal.App.4th 192, 206.)[11]

Concerning judicial review of administrative findings on feasible alternatives, the Court in *City of Hesperia* wrote:

> "'The reviewing court, like the trial court, may not reweigh the evidence, and is "bound to consider the facts in the light most favorable to the Board, giving it every reasonable inference and resolving all conflicts in its favor."'" There is a presumption that the agency's findings are supported by substantial evidence; and since the party challenging those findings has the burden of demonstrating otherwise, here the City must establish that the administrative record does not contain substantial evidence to support the Board's finding that there is no feasible alternative to the Project Site.

(*City of Hesperia, supra*, 37 Cal.App.5th at p. 761, citations omitted.) This standard applies with equal force to this case.

While the City complains about the Tidewater parameters used for environmental and technical criteria and the scoring, it does not provide any reason for the court to

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[11] "[S]ubstantial evidence has been defined in two ways: first, as evidence of '"ponderable legal significance ... reasonable in nature, credible, and of solid value"' [citation]; and second, as "relevant evidence that a reasonable mind might accept as adequate to support a conclusion" [citation]." (*County of San Diego v. Assessment Appeals Bd. No. 2* (1983) 148 Cal.App.3d 548, 555.) "[W]hen applying the substantial evidence test, 'Courts may reverse an agency's decision only if, *based on the evidence before the agency*, a reasonable person could not reach the conclusion reached by the agency.' [Citation.] (Italics in original.)" (*Greenebaum v. City of L.A.* (1984) 153 Cal.App.3d 391, 401-402.)

conclude that deviation from other studies' methodologies was without any foundation, not credible, or unreasonable. The City argues that Tidewater did not provide any support for its scoring and weight methodology, but the City fails to discuss the analytical route taken by Tidewater in choosing the parameters that were evaluated and the basis for assigning the scoring ranges for particular parameters, and weighing factors as it did. (AR 4:54-59.)[12]

The City also fails to address the Tidewater discussion that subjective weighting factors were determined according to relative importance for a successful system location. The Tidewater Memorandum explained that the reason "technical parameters" were given the largest weighted factor was the ability to produce the requisite, annual electrical output needed for a viable system. (AR 4:42, 61.)

In making its arguments, the City also fails to discuss all the relevant evidence on which the District's findings rely, including the RES-BCT Project Review prepared by Sage Energy Consulting, Inc. (AR 4:634-635, 637.)[13]

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[12] The Tidewater Memorandum evaluated the following criteria for a solar system producing similar quantities of electricity as the previously approved system: economic, environmental, social, and technical. Within each criteria, specific parameters were established. (AR 4:54-59.) For example, "technical" included parameters such as shading, elevation, and average annual cloudy days. (AR 4:54.) With respect to elevation, the Tidewater Memorandum provided the following discussion:

> Atmosphere thickness and composition influence the availability of both short and longwave energy of the sun and earth, respectively. The lower the elevation of a region from sea level, the greater the atmosphere thickness; therefore, a PV system's site location with respect to elevation influence the system efficiency (Noorollahi et al., 2016). Those site locations located at less than 2,500 feet amsl were assigned a value of 0. Those site locations ranging from 2,500 to 5,000 feet amsl were assigned a value of 5, and those site locations greater than 5,000 amsl were assigned a value of 10. (AR 4:58.)

[13] Sage evaluated six possible sites for location of solar systems consistent with the District's goal to offset electrical costs. It also reviewed the project proposal at Hesperia Farms, "including the impact of the changes in the RES-BCT tariff on the projected savings in electrical costs over the life of the Project." (AR 4:634.) In doing so, it "evaluated the amount of RES-BCT bill credits generated and associated Benefiting Account credit capacity." (*Ibid.*) Sage also considered different systems, including "wind speed data for potential wind energy systems in the area of [the District's] potential project sites." (*Ibid.*) It did so in relation to the District's intent to proceed with a project to "offset the electrical energy cost of the operation of their water treatment, pumping, and management facilities." (*Ibid.*) Sage discussed the reasons that other systems, such as a wind energy, were not feasible. (AR 4:634-635.) Sage also reviewed the Tidewater Memorandum and found that it adequately identified potential RES-BCT project sites. (AR 4:637.)

The District's report provided a detailed discussion of its investigation of renewable energy options "to offset costs and energy requirements associated with current and projected water and wastewater demands." (AR 4:17-22.) Evaluation was based on project objectives related to substantially offsetting existing and future electricity costs. (AR 4:16, 22-23.) The District considered other alternative forms of renewable energy, including solar thermal, hydroelectric energy, wind, geothermal, and digester gas, and provided reasons for selecting solar technology and rejecting other alternatives based on the project objective to substantially offset existing and future electricity costs. (AR 4:29-32.)

The District considered the following alternatives: no project, reapplying to the City for approval of the project, and alternative locations. (AR 4:32-42.) The District provided a reasoned discussion and analysis why the "no project" and "re-apply" proposals were determined infeasible in terms of the project objectives. (AR 4:32-34.) For example, with the re-apply option, the District discussed that an alternative must be "'capable of being accomplished in a successful manner within a reasonable period of time'" and, given the history of the project, every indication was that a new application to the City would be denied and a waste of further time and resources. (AR 4:34, quoting Gov. Code § 53096, subd. (c).) Substantial evidence supports the District's conclusion.

In considering alternative sites, the District discussed the feasibility of acquiring new sites and evaluated the use of other existing sites. (AR 4:35-42.) Its analysis, including a discussion of the findings in the Tidewater Memorandum and Sage Report, concluded that there was no feasible alternative that met the project objective to substantially reduce the District's existing and future energy costs within a reasonable period. (AR 4:35-42.) The analytical route for the conclusion was provided. The City's

attacks on the Tidewater parameters are insufficient to demonstrate that substantial evidence does not support the District's feasibility finding, assuming that the project qualifies for the RES-BCT program.

The City also argues that the Tidewater analysis did not take into account the new analysis of the Mojave River Dam by the Army Corps. of Engineers. But the City failed to present this evidence at the public hearing. There is no basis to take judicial notice of this document, and the City did not move to augment the administrative record to include it. Therefore, the City's argument on this issue is disregarded.

The City asserts that the Sage report's economic analysis of the different sites fails to show how the comparison numbers were set and why size limitations were placed on alternatives. The City takes issue that the alternative at "the Flats" site is sized smaller at roughly one third the size of the proposed project even though the Flats is a 4.45-acre site. (Reply, pp. 5:16-6:7.)

The District has not had an opportunity to respond, because the City first raised the argument in its Reply brief. Nevertheless, the argument does not demonstrate that substantial evidence fails to support the District's findings. Five acres is minimum acreage for the proposed project. (AR 4:37, 47.) The Flats site is 4.45 acres. (AR 4:51.) The Sage Report discussed that to be economically viable, an RES-BCT system needs to be at least 350 kW DC and requires 3.0 acres. (AR 4:636.) Related to the Flats, the Sage Report states:

> Although the Flats site is currently intended for use in the construction of a new operations building and yard, we evaluated it in its current condition as raw land. The Flats site is not large enough to accommodate a PV system large enough to generate significant electricity cost savings. Sage found that a 365 kW-DC single-axis tracking PV system at the site would provide less than $37,000 of annual savings,

> 6.5% of LACSD annual energy costs. In addition, the Flats site has potential issues with soils and interconnection that could jeopardize the viability of the site to host solar. An annotated SCE DRPEP map is shown in Figure 1 below with nearest access to distribution approximately 1/3 of a mile which would add ~$250,000 to interconnection costs, which would render the project financially unviable. Photographic evidence shows a potential 12kV spur along Hospital Road to the corner of Rouse Ranch Road that is not indicated on the DRPEP map. (AR 4:638.)

The Tidewater Memorandum discussed that the Flats site has been committed to the new Field Operations Department building and corporate yard. The Flats was included "in its current condition as existing vacant land; however, once construction begins, the site would only be appropriate for potential rooftop and partial use." (AR 4:51.) In rejecting the Flats site as a viable alternative, the District noted that it has committed the site "to its Field Operations Department building and corporate yard and has already incurred costs in pursuit of that use." (AR 4:39.) When taken as a whole, substantial evidence supports rejection of the Flats site as a feasible alternative in light of project objectives.

Finally, the City asserts that the studies lack credibility because there was not an adequate process to give the public time to review the studies and hire their own consultants. But the District followed the public notice hearing requirements of Government Code section 53096, subdivision (a), which provides for at least ten days prior notice. The City's argument about the notice period and procedures needs to be addressed with the Legislature, not the court. (*Estate of Horman* (1971) 5 Cal.3d 62, 77.)

E. Institutional Bias as an Improper Influence is Not Shown by the Record.

The City contends that "institutional bias" influenced the feasibility finding, because the District had an ongoing relationship with the consultant it hired to conduct the analysis. But there is no basis to take judicial notice of the contracts the City relies on to support this argument. The court's inquiry under Code of Civil Procedure section 1094.5 is limited to the administrative record. (*City of Hesperia, supra,* 37 Cal.App.5th at p. 766.)

The City also argues that the District's decision is particularly vulnerable to charges of "institutional bias" because its decision is to proceed with essentially the same project that was previously struck down. Citing *Residents Ad Hoc Stadium Committee v. Board of Trustees of the California State University and Colleges* (1979) 89 Cal.App.3d 274, 284, the City argues that there is a *post hoc* rationalization, given that the District had spent $800,000 on the project by March 2018. (AR 63:4319.) The City's institutional bias argument is speculative, not based on evidence.

In *Residents Ad Hoc Stadium Committee, supra,* 89 Cal.App.3d at p. 285, the court discussed that CEQA assumes as inevitable an institutional bias within an agency proposing a project, and that Public Resources Code sections 21000 and 21100 impose procedural requirements to insure that the decision maker does not fail to note the facts and understand arguments advanced by opponents. The City's argument that the precise process detailed in CEQA must be followed to avoid an "institutional bias" claim is without legal support. As previously explained, the requirements for the District's feasibility consideration are set forth in *City of Hesperia.* The City does not provide any legal analysis why the public hearing requirements of Government Code section 53096,

subdivision (a), and the procedures set forth in *City of Hesperia* are insufficient to address "institutional bias" claims and to avoid *post hoc* rationalization.

Nothing in Government Code section 53096, subdivision (a), precludes using a paid consultant to prepare the feasibility analysis. The administrative record demonstrates that the District performed an independent review of the consultants' reports in drafting its Alternatives Report. (AR 4:15-43.)

Finally, the City asserts that the self-serving nature of the studies relied on by the District is demonstrated by Tidewater's introduction and background sections that advocate for the site chosen in 2014. The City argues, "There is no questioning of the analytical gaps in the facts, criteria used for comparison, and the ultimate conclusions." (Opening Br. p. 16:9-10.) But the City does not provide any analysis of what statements were made in the introduction and background that demonstrate "institutional bias." Its conclusory argument is without support. (*Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515, 529 ["'[A]n attack on the evidence without a fair statement of the evidence is entitled to no consideration when it is apparent that a substantial amount of evidence was received on behalf of the respondent.' [Citation.]"].)

V

The City's CEQA Challenge is Unsupported.

A. Further Environmental Review is Not Required Due to Significant New Information.

The City asserts that new information requires supplemental environmental review under Public Resources Code section 21166 and CEQA Guidelines section 15162.

In general, once an EIR or negative declaration has been adopted for a project, the lead agency is not required to prepare a subsequent or supplemental EIR unless one of the following exists:

> (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.
>
> (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.

(Pub. Resources Code, § 21166; see also Guidelines, § 15162, subds. (a) and (b).)

Guidelines section 15162, subdivision (c) provides: "Once a project has been approved, the lead agency's role in project approval is completed, unless further discretionary approval on that project is required." The CEQA review process is not complete until all discretionary approvals are granted.

"Whether an initial environmental document remains relevant despite changed plans or circumstances ... is a predominately factual question" for the agency to first answer. (*Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 953.) "A court's task on review is then to decide whether the agency's determination is supported by substantial evidence; the court's job ""is not to weigh conflicting evidence and determine who has the better argument."" [Citation.]" (*Ibid.*)

In 2017, in an effort to obtain the City's approval of a General Plan Amendment and CUP, the proposed solar farm project was moved 660 feet north to comply with City zoning requirements that preclude solar farms within 660 feet of an agricultural or

residentially designated property. (AR 41:2636-3103; AR 42:3104-3106; AR 44:3121-3123; AR 48:3654-3656.) As moved, the project has the same design and layout, but requires additional trenching to install electrical conduit to connect to SCE facilities. (AR 82:6966.) As part of seeking a General Plan Amendment and CUP, the District adopted an Addendum to the IS/MND. (AR 42:3104-3114; 44:3122.) Under the Addendum, the District found the change in the project site would not result in any new significant environmental effects triggering the need for further environmental review. In August 2017, the District filed and posted the Notice of Determination. (AR 1:1-3; 42:3105-3106.)

The current project involves essentially the same solar farm project proposed in 2017, with the issue being the qualified exemption under Government Code section 53096, subdivision (a). The District's June 2, 2020, Notice of Public Hearing stated that the Board was holding a public hearing to consider adopting a Resolution that there is no feasible alternative to the Hesperia Farms project pursuant to Government Code section 53096. (AR 100:7677-7679.) The Agenda listed a similar description of the public hearing related to adopting Resolution No. 2020-04. (AR 81:6961.) In the District's June 2020 Resolution, the District noted that a CEQA review was completed for the project in 2017. (AR 3:11-12.)

On July 2, 2020, following the feasibility hearing, the District filed and posted a Notice of Determination stating that the same project approved in August 2017 was fully analyzed in the prior MND and Addendum, concluding that the project would not have a significant effect on the environment. (AR 2:7-9.)

The Staff Report regarding Resolution No. 2020-04 discussed that on August 8, 2017, the Board adopted Resolution No. 2017-15 approving and adopting Addendum

No. 1 to the Final MND for the alternative site under CEQA and approving the alternative site. It discussed the finding that the change in location would not result in any new significant environmental effect triggering the need for further environmental review under Public Resources Code section 21166 or State CEQA Guidelines section 15162. It also stated that the alternative site is subject to the same mitigation measures as the original site. (AR 82:6966.) The June 2020 Alternatives Report discussed the prior environmental review process and adoption of the Addendum in 2017. (AR 4:19, 21.)

The City's comments, submitted before the public hearing, raised an issue about the environmental document failing to address "feasible alternatives." (AR 101:7707-7708.) But the City's argument in its Opening Brief is not based on the failure to address alternatives as part of CEQA review. Instead, the City's challenge is based on significant new information that requires further environmental review.

The City now claims that the District's Addendum to the MND is deficient because it did not consider significant new information about the risk of the Mojave River Dam failing. It asserts that the record lacks a discussion of this new information published in November 2019, in which the Army Corps' News Release warned of greater risk from the Mojave River Dam failing. The City contends the District is proceeding in a manner not required by law because it failed to consider this new information and instead relied on the 2017 Addendum.

The District argues that it complied with CEQA when it adopted the 2017 Addendum. The District contends that the City fails to demonstrate the existence of "new information" under Public Recourses Code section 21166 and Guidelines section 15162, subdivision (a). According to the District, the City failed to exhaust its

administrative remedies; judicial notice cannot be taken of the information on which the City relies; and even if the City's claim is not barred by the failure to exhaust, there are no subsequent discretionary approvals to trigger CEQA review.

B. The City Failed to Exhaust Administrative Remedies.

The District is correct that the City failed to exhaust its administrative remedies on this issue.

The City argues in its Reply that the District's decision to find alternatives infeasible and approve the project under Government Code section 53096 is a discretionary approval triggering the need for a CEQA determination. But this was not the argument raised in the City's Opening Brief. The argument raised in the Opening Brief was directed to asserting that the District failed to consider new significant information, rendering reliance on the 2015 MND and 2017 Addendum deficient.

The court considers the City's argument made on reply only as it relates to the District's exhaustion of administrative remedies defense. In other words, to the extent the City asserts in its Reply that the District failed to make required CEQA findings in approving the project, that argument is waived. But to the extent it is offered as a reason that the significant new information argument was not raised earlier, it is considered.

The 2020 approval is a discretionary approval to which CEQA applies, requiring consideration whether one of the three triggering events for a supplemental or subsequent EIR exists. Substantial evidence supports a conclusion that the solar energy project as described and considered in the 2017 Addendum is the same project approved in 2020. The only change in circumstance was the manner under which project approval was sought: the District's finding that the qualified exemption under

Government Code section 53096 applied rather than the City approving the District's application for a General Plan Amendment and CUP. The question then is whether the "significant new information" factor of Public Resources Code section 21166, subdivision (c), and Guidelines section 15162, subdivision (a)(3), triggers subsequent CEQA review.

Nothing in CEQA requires an agency to make an explicit finding that the original environmental document retains some degree of relevance. (*San Mateo Gardens, supra,* 1 Cal.5th at p. 953, fn.4.) "When an agency considers a subsequent discretionary action on a project, it will know whether changes are proposed in the project but may be unaware of changes in circumstances or new information of importance to the project. Nothing in CEQA or the Guidelines requires the agency to conduct an investigation to ferret out changes in circumstances or new information. If the agency becomes aware of such factors, however, it should then consider all the relevant facts and explicitly decide whether conditions exist that necessitate further environmental review. If a project opponent is aware of changed circumstances or new information, bringing that material to the agency's attention might obligate the agency to conduct an investigation to determine whether further environmental review is required." (Kostka & Zischke, Practice Under the California Environmental Quality Act (2d ed Cal CEB) § 19.37.)

The District made an implied finding of no changes to the project that require further environmental review under Public Resources Code section 21166. The District's 2020 Alternatives Report states: "No legal challenges were filed under CEQA against the Original Site or the Alternative Site where the Proposal would be located.

Thus, the Final MND and Addendum are presumed valid under Public Resources Code sections 21080.1 and 21167.2 and State CEQA Guidelines section 15231." (AR 4:29.)

"CEQA does not set forth any particular procedure to support an agency's decision that a new EIR [or MND] is not required. CEQA does not require an initial study or public hearing in these circumstances." (*Committee for Re-Evaluation of T-Line Loop v. San Francisco Municipal Transportation Agency* (2016) 6 Cal.App.5th 1237, 1256.) As explained in Kostka & Zischke, Practice Under the California Environmental Quality Act, *supra*, § 19.48: ""There is no specific requirement in CEQA or the CEQA Guidelines that public notice and an opportunity to comment be provided in connection with a determination of whether a subsequent or supplemental EIR is required for a project." (Citing Pub. Resources Code, § 21166; Guidelines, § 15162; *A Local & Regional Monitor (ALARM) v. City of Los Angeles* (1993) 12 Cal.App.4th 1773, 1804 ["holding that CEQA does not require a public hearing or public comment before a determination whether a subsequent or supplemental EIR is required"]; *Concerned Citizens of South Central L.A. v. Los Angeles Unified School Dist.* (1994) 24 Cal.App.4th 826, 845.)

In *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 701-702, the Court found the exhaustion requirement of Public Resources Code section 21177 did not apply where "there was no clearly defined administrative procedure for petitioners to resolve their concerns about the project as it was finally configured." But in several other cases, the Court has come to a contrary conclusion. (*ALARM, supra,* 12 Cal.App.4th at p. 1804 ["At no time during the administrative process did anyone ... suggest that a separate public hearing was required."]; *Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385, 1394-

1395 [finding the exhaustion requirement applied where regularly schedule meetings open to the public were held, even if not "duly noticed public hearings under CEQA"].)[14] In *Bridges v. Mt. San Jacinto Community College District* (2017) 14 Cal.App.5th 104, 117, the Court followed *Mani Brothers,* concluding that the CEQA exhaustion requirement was triggered even though there was not a public hearing held under CEQA, where there was a regularly scheduled meeting that was open to the public.

There is no dispute that a public hearing on the District's consideration of the qualified exemption was posted as required. While the City argues that the District failed to provide adequate notice that an environmental decision would be made, a public hearing is not required for an implied finding of no subsequent environmental review. In addition, the City was able to comment and generally asserted that the CEQA document failed to address feasibility alternatives. (AR 101:7707-7708.) The City had an opportunity during the administrative proceeding to raise its CEQA objection that significant new information existed but failed to do so. It has failed to show CEQA's exhaustion exception applies. This issue is barred by the failure to exhaust administrative remedies.

C. There is No Basis for Finding the Existence of Significant New Information.

In *Bridges*, even though the Court found the failure to exhaust, the Court went on to evaluate the merits of the CEQA claim as if exhaustion did not apply. (*Bridges, supra,* 14 Cal.App.5th at pp. 118-126.) Here, even if the exhaustion conclusion did not preclude the City's claim, the CEQA argument lacks merit.

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[14] Public Resources Code section 21177, setting forth the exhaustion requirement, provides at subdivision (e): "This section does not apply to any alleged grounds for noncompliance with this division for which there was no public hearing or other opportunity for members of the public to raise those objections orally or in writing before the approval of the project, or if the public agency failed to give the notice required by law."

First, there is no statutory basis for the City's request for judicial notice of the November 2019 News Release, and the City does not explain why it failed to seek to augment the administrative record prior to briefing on the merits.

But even if the court were to consider the News Release, it is insufficient to trigger subsequent environmental analysis. "CEQA analysis is concerned with a project's impact on the environment, rather than with the environment's impact on a project and its users or residents." (*California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369, 378.) CEQA does not require analysis of the impact of existing environmental conditions on a project's future users or residents. (*Id.* at p. 377.) Guidelines section 15126.2, subdivision (a), is consistent with the ruling in *California Building Industry Association*.

Given that an MND is at issue, the News Release's discussion of a new assessed increased risk of flooding during an extreme flood event does not constitute substantial evidence in favor of a fair argument that a new significant environmental impact from the project may occur. (*San Mateo Gardens, supra,* 1 Cal.5th at p. 959.) The increased flood assessment risk is not new information of substantial importance because it does not constitute substantial evidence that the project may exacerbate the existing flooding risk. Therefore, the City's CEQA argument is without merit.

VI

Conclusion

For the reasons explained above, the petition for a writ of mandate is denied.

Dated: September 16, 2021

David Cohn
Judge of the Superior Court

EXHIBIT A

Superior Court of California
County of San Bernardino
247 W. Third Street, Dept. S26
San Bernardino, California 92415-0210

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT

City of Hesperia, a municipal corporation,

Petitioner and Plaintiff,

Lake Arrowhead Community Services District, a public body corporate and politic, Board of Directors of Lake Arrowhead Community Services District; and DOES 1 through 50, inclusive,

Respondent and Defendant.

Southern California Edison; Sunpower Corporation Systems; and Stiffel, Nicolaus & Company, Incorporated

Real Parties in Interest.

Case No.: CIVDS2019176

RULING ON PETITION FOR WRIT OF MANDATE: GRANTED

Date: July 12, 2021
Time: 1:30 p.m.
Dept: S-26

I

Introduction

Petitioner City of Hesperia (the "City") seeks a writ of mandate to prevent Respondent Lake Arrowhead Community Services District (the "District")[1] from building a solar energy project on land the District owns in an area of the City known as Hesperia Farms. The City contends the project violates the City's general plan and zoning ordinances. The District, however, contends it is statutorily exempt from compliance pursuant to Government Code section 53096, subdivision (a), which provides an exemption for projects related to the "storage or transmission" of electricity when there is "no feasible alternative."

The project is intended to generate electricity pursuant to the Local Government Renewable Energy Self-Generation Bill Credit Transfer program ("RES-BCT"),[2] which allows local governments, under specified circumstances, to generate electricity on one site, export it to the electrical grid, and apply the resulting energy credits against electricity bills incurred on a different site. (Pub. Util. Code, § 2830.) To comply with the requirement for exemption from the City's general plan and zoning ordinances, the District determined that there is "no feasible alternative" to the Hesperia Farms site, because other sites would not be suitable for the District's intended purpose—generating electricity under the RES-BCT program.

However, the District's premise underlying the selection of the site in Hesperia Farms—that the site qualifies for the RES-BCT program—is mistaken. The site does not

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1 The Board of Directors of Lake Arrowhead Community Service District is named as an additional respondent.

2 The acronym RES-BCT is used with respect to Aretha Franklin and her anthem, RESPECT.

qualify for the program because it is not located "within the geographical boundary" of the District, as required by section 2830, subdivision (a)(4)(C). Although other sites may be infeasible because they are unusable for the RES-BCT program, or for other reasons, this site is *also* infeasible because it is not within the geographical boundary of the District. Therefore, the statutory exemption from the City's general plan and zoning ordinances does not apply. Accordingly, the City's petition for a writ of mandate is granted.[3]

II

Background

A. The Former Version of the Project

In 2016, the City brought a similar writ petition challenging an *earlier* decision by the District to approve a *similar* solar project in the same general area. (*City of Hesperia v. Lake Arrowhead Community Services District et al.*, San Bernardino County Superior Court Case No. CIVDS1602017.) As in this case, the City contended that the project did not comply with the City's general plan and zoning ordinances. Also as in the case, the District contended that the project was statutorily exempt from compliance. The trial court agreed with the City and granted the petition. The Court of Appeal affirmed the judgment in *City of Hesperia v. Lake Arrowhead Community Services District* (2019) 37 Cal.App.5th 734, finding that the project was not exempt from the City's general plan and zoning ordinances.

The Court of Appeal began its analysis with the observation that "the Legislature has attempted to achieve a balance between the state's interest in allowing local

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[3] Other grounds for the petition are denied as addressed *infra*, in § IV.

agencies to produce, generate, store, and transmit water or electrical energy and the cities' and counties' control over local building and zoning." (*City of Hesperia, supra,* at p. 739.) The specific issue before the Court was whether the District's solar project was "exempt from—or must comply with—the zoning ordinances" of the City. (*Ibid.*) The Court summarized the statutory scheme, which balances the competing interests:

> Our analysis begins with the statutory requirement that, for purposes of a proposed solar energy project, a local agency must comply with the zoning ordinances of the city and county in which the project's facilities are to be constructed or located. (Gov. Code, § 53091, subd. (a) ... Then, as potentially applicable here, section 53091, subdivision (e) (§ 53091(e)), and section 53096, subdivision (a) (§ 53096(a)), each provides the agency with an exemption for the location and construction of certain types of facilities. Section 53091(e) provides an *absolute exemption* for "the location or construction of facilities ... for the production or generation of electrical energy"—unless the facilities are "for the storage or transmission of electrical energy," in which event the zoning ordinances apply. Section 53096(a) provides a *qualified exemption* for an agency's proposed use upon, first, a showing that the development is for facilities "related to storage or transmission of water or electrical energy" and, second, a resolution by four-fifths of the agency's members that "there is no feasible alternative to [the agency's] proposal."

(*City of Hesperia, supra,* 37 Cal.App.5th at pp. 739-740, italics in original.)

Although the parties agreed that the project qualified as a solar farm under Hesperia Municipal Code ("HMC") section 16.16.063, which addresses "alternative energy technology standards," the *zoning* of the property presented an obstruction. HMC section 16.16.063.B, provides:

> Solar farms shall only be allowed on *nonresidential and nonagricultural designated properties* with approval of a conditional use permit by the planning commission. Solar farms *shall not be permitted within six hundred sixty (660) feet* of a railway, spur, any interstate, highway, or major

> arterial, arterial, or secondary arterial roadway; *or any agricultural or residentially designated property.*

(Italics added; AR 76:6892.)

The property where the District intended to build the project was zoned "Rural Residential," and the solar project was to be located within 660 feet of property to the south, zoned for agricultural use. (*City of Hesperia, supra,* at pp. 741-742.) Therefore, the project was prohibited under HMC section 16.16.063.B, unless an exemption applied—either the absolute exemption under Government Code section 53091, subdivision (e), or the qualified exemption under Government Code section 53096, subdivision (a).

Attempting to address this problem, the District adopted a Resolution determining that the project met the criteria for both the absolute exemption and the qualified exemption. First, the District found that the absolute exemption applied because the District was a generator of electricity. Second, the District found that the qualified exemption applied because there was "no feasible alternative" to the location of the project. (*City of Hesperia, supra,* 37 Cal.App.5th at pp. 743-744.)

The City sued and the trial court found that the proposed project did not fall within the absolute exemption, because the project included the *transmission* of electrical energy, which is excluded from the exemption provided by section 53091, subdivision (e), for generation or production of electrical energy. The trial court also found that the qualified exemption based on infeasibility was not supported by substantial evidence. Therefore, the trial court found that the project was not exempt from the City's general plan and zoning ordinances.

The District appealed.

In 2017, the parties agreed to stay the appeal while the District applied for General Plan Amendment to change the land use designation of Hesperia Farms to Public (i.e., not Rural Residential) and for approval of a Conditional Use Permit ("CUP") to construct a solar farm on the property. (AR 4:20-21; AR 36:2568-2569; AR 44:3121-3123.) The project was the same as the original version except for moving it 660 feet to the north to comply with HMC section 16.16.063.B (prohibiting solar projects within 660 feet of property zoned for agricultural use). If the City granted the District's application, the issues on appeal would be moot and the project could go forward.

On January 16, 2018, however, the City denied the District's applications and on March 20, 2018, adopted Resolution No. 2018-09, denying the General Plan Amendment, and adopted Resolution No. 2018-10, denying the CUP. (AR 51:4160; AR 61:4292-4296; AR 62:4297-4300.)

The District did not challenge the City's denials. Instead, the appeal proceeded, resulting in the *City of Hesperia* decision in favor of the City, filed July 19, 2019.[4]

The appellate court affirmed the trial court's ruling that the proposed project did not fall within the *absolute* exemption because the project included the *transmission* of electrical energy. (*City of Hesperia, supra,* at pp. 740, 749-759.) The appellate court also affirmed the trial court's conclusion that the proposed project did not fall within the *qualified* exemption, because substantial evidence did not support the District's conclusion that there was "no feasible alternative" to the location chosen for the project. (*City of Hesperia, supra,* at pp. 740, 760-766.) In determining feasibility, the Court found guidance in the application of feasible alternatives and feasible mitigation

[4] The appeal considered the project as *originally* conceived, located within 660 feet of agriculturally designated property. (*City of Hesperia, supra,* at p. 742.)

measures in the California Environmental Quality Act, Public Resources Code section 21000 *et seq.* ("CEQA"). (*City of Hesperia, supra,* at pp. 762-764, 767.)

B. The Current Version of the Project

Shortly after the appellate court issued its ruling, the District arranged for consultants to prepare two technical reports, which had not been prepared for the original project. The first was entitled RES-BCT Project Review (the "Sage Report"). The second was entitled Technical Memorandum for Feasibility Evaluation of Potential Photovoltaic System Sites (the "Tidewater Memorandum"). Based on these studies, the District's staff prepared a report entitled "Alternatives to Proposed Solar Photovoltaic System on Hesperia Farms Property (the "Alternatives Report").

On June 23, 2020, the District held a public hearing on the solar project as it was described in the earlier General Plan and CUP applications, which the City had denied. The District then adopted Resolution 2020-04, finding that there is *no feasible alternative* to the proposed project, pursuant to the qualified exemption of Government Code section 53096. (AR 3:11-14.) The Resolution stated:

> The District's determination is based on [the] Alternatives Report, including but not limited to the Tidewater Memorandum and the Sage Report, and the remaining administrative record for such determination, the District's approval of the Original Site, and the District's approval of the Alternative Site (the Proposal).

(*Id.* at p. 12.) The Resolution found that the District's determination rendered the City's general plan and zoning ordinances inapplicable based on the newly supported qualified exemption. (*Ibid.*)

The City, however, contends that the District's determination that it is statutorily exempt from compliance with the City's general plan and zoning ordinances is still

invalid because the site does not qualify for the RES-BCT program and because the District's determination is unsupported by substantial evidence in other respects as well.

III

The District's Reliance on the RES-BCT Program is Misplaced.

A. Whether the Project Qualifies for the RES-BCT Program is a Question of Statutory Interpretation, Subject to De Novo Review.

The City's first cause of action seeks a writ of mandate under Code of Civil Procedure section 1085 (a "traditional" writ) directing the District not to proceed with the project on the ground that the project site fails to meet the requirements for the RES-BCT program under Public Utilities Code section 2830. (Petition, ¶¶ 46-49; Prayer for Relief, ¶1.)

The City's third cause of action seeks a writ of mandate under Code of Civil Procedure section 1094.5 (an "administrative writ") *and* under section 1085, also directing the District not to proceed with the project without complying with the City's general plan and zoning ordinances. (Petition ¶¶ 58-63; Prayer for Relief, ¶ 3.) The third cause of action alleges that the District's determination that there was "no feasible alternative" to the site is unsupported by substantial evidence. (Petition ¶ 61.) The City argues that because the project site fails to meet the requirements of the RES-BCT program, the site is not a "feasible" site for the project.[5]

Usually, the standard of review for a traditional writ is whether the agency's action was "arbitrary, capricious, entirely lacking in evidentiary support, or failed to follow the procedure required by law." (*Martis Camp Community Assn. v. County of*

[5] Other grounds for the City's contention that the District's determination of "no feasible alternative" is unsupported are discussed *infra,* at § IV.

Placer (2020) 53 Cal.App.5th 569, 594.) For an administrative writ, the standard of review usually is whether the agency's decision is supported by substantial evidence. (*City of Hesperia*, *supra*, 37 Cal.App.5th at pp. 747-748, 761-762.) But the question whether the City's reliance on the RES-BCT program is proper involves a question of statutory interpretation. Whether an agency's decision is reviewed under traditional or administrative mandamus, the interpretation and application of a statute to undisputed facts involves a question of law. In such circumstance, the court exercises independent judgment and reviews the issue de novo, relying on settled rules of statutory construction. (*Department of Health Care Services v. Office of Administrative Hearings* (2016) 6 Cal.App.5th 120, 139-141.)

As explained below, under the de novo standard of review (or, for that matter, under the "arbitrary and capricious" or "substantial evidence" standards), the District's selection of the project site for the RES-BCT program is improper.

B. The Project Does Not Qualify for the RES-BCT Program Because it is Not Located Within the "Geographical Boundary" of the District, as Required by Public Utilities Code Section 2830.

Under specified circumstances, Public Utilities Code section 2830 allows a "local government" to generate electricity on one site it owns, export it to the electrical grid, and apply resulting energy credits against bills for electricity used by the local government on another site it owns. There is no dispute that the District qualifies as a "local government" pursuant to section 2830, subdivision (a)(6), defining a "local government" to include a "special district." There is also no dispute that the District owns the project site and owns other property to which credits could be applied.

On August 27, 2015, the District entered into a Generator Interconnection Agreement for the project with Southern California Edison Company (SCE) pursuant to section 2830. (AR 26:1777-1838.)

To be eligible for the program, however, a "generation facility," such as the one contemplated for this project, is subject to other requirements as well. Section 2830, subdivision (a)(4), provides in relevant part:

> "Eligible renewable generating facility" means a generation facility that meets *all* of the following requirements:
> ...
> (C) *Is located within the geographical boundary of the local government* ....

(Italics added.)

The geographical boundary of the District is shown on a map set forth in a report by the Local Agency Formation Commission for the County of San Bernardino (LAFCO). (2016 AR 77:2316.)[6] The geographical boundary encloses the area depicted in yellow on the map. The project site is not located within this boundary, but is some eight miles north of Lake Arrowhead. (AR 4:49.) The project site, geographically, is within the boundary of the City, not within the boundary of the District.

The District, however, contends that the project site satisfies the requirement that the project be located within the geographical boundary of the District, because LAFCO has determined that the site is within the District's "sphere of influence."[7] But a "sphere of influence" is a separate concept from a "geographical boundary."

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[6] Citation to "2016 AR" refers to the administrative record from the 2016 litigation that was made part of the certified administrative record.

[7] Presumably, SCE took the same view or it would not have entered into a contract for the RES-BCT program with the District.

A special district "is an entity of limited powers, and it has specifically circumscribed geographic and 'sphere of influence' boundaries." (*Modesto Irrigation Dist. v. Pacific Gas & Electric Co.* (N.D. Cal. 2004) 309 F.Supp.2d 1156, 1159, fn. omitted.)[8]

Government Code section 56076 defines "sphere of influence" as a "*plan for the probable physical boundaries* and service area of a local agency, as determined by the commission [LAFCO]." (Italics added.) "In this sense, a 'sphere of influence' is a prospective measure, charting what a … district's boundaries might be at some future point. A district's 'sphere of influence' is not necessarily coextensive with its existing service area." (*Modesto Irrigation, supra,* at p. 1159, fn. 4, citations omitted.)

LAFCO specifically noted the distinction: "Any sphere modifications would not affect any agency's current boundary …." (2016 AR 77:2316; *see also* 2016 AR 77:2317-2318, 2344-2345 [discussing that since 1983, the District's boundary and sphere of influence had been coterminous and including map showing that the Hesperia Farms property is not coterminous with the District's boundary].)

Although Government Code section 56076 uses the term "physical boundaries," rather than the term "geographical boundary," the District's "sphere of influence" is distinct from its "geographical boundary." LAFCO's determination that the project site is a "*plan* for the *probable* physical boundary" indicates that another step is required

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[8] Government Code section 56036 defines a "district" and "special district" as synonymous and as "an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries and in areas outside district boundaries when authorized by the commission pursuant to Section 56133." Section 56133 allows a district to provide new or extended services outside its jurisdictional boundary and within its sphere of influence with LAFCO's authorization. Jurisdictional boundaries are "*de facto* less expansive than 'spheres of influence.'" (*Modesto Irrigation, supra,* 309 F.Supp.2d at p. 1167 fn. 21; *see also Community Water Coalition v. Santa Cruz County Local Agency Formation Com.* (2011) 200 Cal.App.4th 1317, 1325, fn. 3.) Section 56133's use of the term "jurisdictional boundary" is not demonstrated to be relevant to the issue whether a "sphere of influence" is within the District's "geographical boundary."

before the site is within the geographical boundary, namely annexation. (*See* 2016 AR 77:2317, 2344 [discussing that annexation would avoid property tax].) Annexation is "the inclusion, attachment, or addition of territory to a city or district." (Gov. Code, § 56017.)[9] That has not occurred.

Therefore applying the de novo standard of review, the District's selection of the project site for use under the RES-BCT program was improper.[10]

As a result, the District's reliance on the RES-BCT program is impermissible because the project site is not located within the District's geographical boundary, as required by Public Resources Code section 2830, subdivision (a)(4)(C). The District's finding that there are no feasible alternative sites is based in large part on the operation of an economically viable RES-BCT system to generate bill credits. (AR 4:22-23, 42-43.) But the District cannot rely on the qualified exemption from the City's general plan and zoning ordinances under Government Code section 53096, subdivision (a), if the RES-BCT program is not viable on the site.[11] The District must first comply with the City's general plan and zoning ordinances.

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[9] Bringing property within a sphere of influence facilitates annexation. (*City of Agoura Hills v. Local Agency Formation Com.* (1988) 198 Cal.App.3d 480, 491.)

[10] In the prior litigation, the trial court discussed the RES-BCT program and the Agreement entered into on August 27, 2015, rejecting the City's argument that the District had no authority to enter into the Agreement under Government Code sections 61000, et seq. (City's Request for Judicial Notice, Exh. B, Ruling at p. 4:12-6:3.) The appellate court noted this finding, stating: "Deciding that the District has authority under the RES-BCT Program (Pub. Util. Code, § 2830) to produce electricity for Edison, the trial court denied the writ of mandate under the first cause of action. (*City of Hesperia, supra,* 37 Cal.App.5th at p. 745.) The District here does not argue that principles of res judicata or collateral estoppel preclude the City's new attack on the District's qualification for the RES-BCT program. Therefore, these principles are not considered.

[11] The absolute exemption, at issue in the prior litigation, is not at issue here.

C. The City Has Standing to Challenge the District's Reliance on the RES-BCT Program.

The District argues, however, that the City lacks standing to challenge the District's agreement with SCE for the RES-BCT program. First and foremost, the City's argument is not an attack on the agreement *per se*; it is an attack on the District's *use* of the agreement to establish that the Hesperia Farms site is the only "feasible" location for the project.

Furthermore, Code of Civil Procedure section 1086 provides: "The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the verified petition of the *party beneficially interested.*" (Italics added.) "The term 'beneficially interested' generally means that the person '"has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large. [Citations.]"' (*Save the Plastic Bag* [*Coalition v. City of Manhattan Beach* (2011)] 52 Cal.4th [155], 166.) In addition, the beneficial interest must be substantial and direct. (*Ibid.*) If the writ sought would enforce only a technical, abstract or moot right, the interest is not substantial for purposes of the beneficial interest requirement. (*Braude v. City of Los Angeles* (1990) 226 Cal.App.3d 83, 87 [276 Cal. Rptr. 256].)" (*Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 205.)

In *Consolidated Irrigation District,* the Court discussed that a public agency may be beneficially interested if its "'resources or programs administered ... may be affected by the project. [Citations.]' [Citations.]" (*Ibid.*) The Court found that the special district's operation of a groundwater recharge program gave it a beneficial interest to

challenge an environmental impact report because the project could affect the district's efforts to add to local groundwater. (*Id.* at p. 206.)

The City demonstrates it has a special interest in the enforcement of its zoning ordinances. The use of Hesperia Farms as a solar farm project under the RES-BCT program implicates the City's ability to enforce its zoning ordinances as a result of Government Code section 53096, subdivision (a). Therefore, the City has a special interest in the operation of the project under the RES-BCT program within the City's limits. The District's qualification for the program is tied to the feasibility analysis. Therefore, the City has standing to challenge the District's finding that the project site is the only feasible alternative because the District's intended use of the site is not allowed when the site has not been annexed within the District's "geographical boundary."

D. The District Has Not Demonstrated a Statute of Limitations Bar to the City's Challenge.

The District argues that the City's challenge to the District's use of the RES-BCT program is barred by the statute of limitations, whether the thirty-day limitations period of Government Code section 11523, applicable to challenges to agencies subject to the Administrative Procedure Act, or the four-year "catch-all" limitations period of Code of Civil Procedure section 343.

The court cannot consider the District's argument under these statutes, because the District's Answer did not place these limitations periods in issue. The District's Eleventh Affirmative Defense asserted that the Petition is barred by the applicable statute of limitations "including but not limited to California Public Resources Code section 21167 and Code of Civil Procedure section 1094.6." Public Resources Code section 21167 applies to CEQA and is not applicable to whether the District is eligible

for the RES-BCT program. As for Code of Civil Procedure section 1094.6, the District does not argue it applies. Because the District's Answer failed to plead the *specific* statutes of limitation argued in the District's opposition, they cannot be considered. (See *Martin v. Van Bergen* (2012) 209 Cal.App.4th 84, 91.)

IV

The City's Other Grounds for Challenging the Feasibility Finding are Unsupported.

A. *City of Hesperia* Requires a Consideration of Alternative Locations.

As discussed above, Government Code section 53091, subdivision (a), provides: "Each local agency shall comply with all applicable building ordinances and zoning ordinances of the county or city in which the territory of the local agency is situated." Also discussed above, Government Code section 53096, subdivision (a), provides a qualified exemption for a local agency's use of property for facilities "related to storage or transmission of … electrical energy" when there is no "feasible alternative."

City of Hesperia considered CEQA as "guidance" for analyzing the definition of "feasible" in section 53096, subdivision (c), given the lack of other authority.[12] (*City of Hesperia, supra*, 37 Cal.App.5th at p. 762.) Under CEQA, "'[t]he range of alternatives is governed by the "rule of reason," which requires an analysis of the alternatives necessary to permit a reasoned choice. An [environmental impact report] need not consider an alternative, the effect of which cannot be reasonably ascertained and the implementation of which is remote and speculative.'" (*Id.* at p. 763, quoting *Citizens of*

[12] "Feasible" means "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (Gov. Code, § 53096, subd. (c).)

Goleta Valley v. Board of Supervisors (1988) 197 Cal.App.3d 1167, 1177-1178, fn. omitted in original.)

As under CEQA, for purposes of section 53096, the "'rule of reason' *requires* consideration of alternatives." (*Ibid.*) *City of Hesperia* found:

> For section 53096(a)'s qualified exemption to apply, section 53096, subdivision (c)'s definition of 'feasible' requires the necessary finding to be there is no alternative to the agency's proposal that is 'capable of being accomplished in a successful manner within a reasonable period of time'; and that necessary finding must be supported by substantial evidence of the 'economic, environmental, social, and technological factors.'

(*City of Hesperia, supra,* at p. 764.) The court stated:

> [I]n order for the District to have properly determined that "there is no feasible alternative" to the proposed location of the Solar Project for purposes of section 53096(a), the District was required to have: (1) considered alternative locations; (2) taken into account economic, environmental, social, and technological factors associated with both the Project Site and the alternative locations; and (3) determined—i.e., exercised discretion based on substantial evidence in the administrative record—that, at the alternative locations, the proposal was not capable of being accomplished in a successful manner within a reasonable period of time.

(*Id.* at p. 767.) Therefore, under *City of Hesperia*, this is the standard to apply when determining whether substantial evidence supports the District's feasibility finding.[13]

B. The District's Purpose in Choosing the Project Site is Irrelevant.

In *City of Lafayette v. East Bay Municipal District* (1993) 16 Cal.App.4th 1005, 1017, the Court wrote:

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[13] The District's argument that "even under CEQA an agency is not required to provide the public with an opportunity to review and comment or debate an agency's economic feasibility analysis" (Opp. Br. p. 21:7-9, citing *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1505-1506), is irrelevant. Government Code section 53096, subdivision (a) requires a public hearing with at least ten days' notice.

> The primary objective of the statutory scheme is to maintain local control of land use decisions (§ 53091), with carefully specified exceptions where necessary to *further countervailing interests*.

(Italics added.)[14]

Relying on *Lafayette*, the City argues that the project does not "further countervailing interests" such as placing water or electricity facilities that are necessary and indispensable to the agency's authorized functions, because the District's *purpose* in building the project is merely to reduce its own electricity costs.

This argument directed to the agency's purpose was previously rejected in *City of Hesperia* in connection with the Court's discussion of the absolute exemption. The Court found, contrary to the City's argument, that the exemption is based "on the purpose of *the proposed facilities*, not on the purpose of *the agency developing the proposed facilities*." (*City of Hesperia, supra*, at p. 755, italics in original; footnote omitted.) The City argued that the exemption should not apply because the project was not "integral" or "directly related" to the District's authorized function to provide water and wastewater treatment. The Court found this to be irrelevant to the application of the absolute exemption.

The City fails to provide any different analysis for the qualified exemption that would distinguish it from the argument already rejected by the Court of Appeal in connection with the absolute exemption. The project is related to the transmission of electrical energy project to which section 53096 applies. The District's *purpose* for the project is irrelevant. This ground for a writ is denied.

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[14] *Lafayette* addressed the legislative intent of the statutory scheme with respect to *water*. *City of Hesperia* found the same legislative intent when "proposed facilities are for the production or generation of *electrical energy*." (*City of Hesperia*, *supra*, at p. 752, italics in original.)

C. Procedures Under CEQA are Irrelevant to the Alternatives Analysis.

The City argues that the alternatives standards under CEQA, including the time given to review and comment on a draft Environmental Impact Report ("EIR"), should apply to the alternatives analysis under Government Code section 53096. This argument apparently relates to a claimed *procedural* defect in the District's proceedings—that it did not proceed as it would proceed under CEQA. "Where the alleged defect is that the agency has failed to proceed in the manner required by law, the court determines de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated requirements." (*Chico Advocates for a Responsible Economy v. City of Chico* (2019) 40 Cal.App.5th 839, 845, citation omitted.) Therefore, this court considers the argument de novo.

The City has failed to demonstrate that the CEQA requirements applicable to public notice and the notice period for review of an EIR are relevant to the notice period required for a hearing on the qualified exemption under section 53096. Section 53096, subdivision (a), sets forth the minimum public notice period of at least ten days. The District complied with the notice requirement. This ground for a writ is denied.

D. *If* the Project Site Were Qualified for the RES-BCT Program, the Methodology Employed for the Analysis of Alternatives is Not Shown to be *Otherwise* Inadequate.

Because the project does not qualify for the RES-BCT program, the analysis of alternatives is fundamentally flawed, and the selection of the project site in Hesperia

Farms is unsupported by substantial evidence. *The discussion below assumes arguendo that the project qualifies for the RES-BCT program.*

Much of the City's argument about the District's feasibility determination amounts to a criticism of the parameters used in the Tidewater Memorandum, which the District's Alternatives Report relies on. The City complains that there is no evidence of the "analytic route the administrative agency traveled from evidence to action" in determining why the particular sites received the particular scores they received. The City complains about the twenty parameters used, asserting that they are different from those used in studies of different solar projects that the Tidewater Memorandum referenced as a basis for the parameters. It argues that the large number of parameters used by Tidewater invites and facilitates manipulation.

The City's argument is insufficient to demonstrate that substantial evidence does not support the feasibility findings in light of the whole record. The City's burden is discuss *all* relevant evidence on the issue of the feasibility findings and to demonstrate that substantial evidence does not support the District's findings in light of the whole record. (*Latinos Unidos de Napa v. City of Napa* (2013) 221 Cal.App.4th 192, 206.)[15]

Concerning judicial review of administrative findings on feasible alternatives, the Court in *City of Hesperia* wrote:

> "'The reviewing court, like the trial court, may not reweigh the evidence, and is "bound to consider the facts in the light most favorable to the Board, giving it every reasonable inference and resolving all conflicts in its favor."'" [Citations omitted.] There is a presumption that the agency's findings

[15] "[S]ubstantial evidence' has been defined in two ways: first, as evidence of ""ponderable legal significance ... reasonable in nature, credible, and of solid value"" [citation]; and second, as '"relevant evidence that a reasonable mind might accept as adequate to support a conclusion"' [citation]." (*County of San Diego v. Assessment Appeals Bd. No. 2* (1983) 148 Cal.App.3d 548, 555.) "[W]hen applying the substantial evidence test, 'Courts may reverse an agency's decision only if, *based on the evidence before the agency*, a reasonable person could not reach the conclusion reached by the agency.' [Citation.] (Italics in original.)" (*Greenebaum v. City of L.A.* (1984) 153 Cal.App.3d 391, 401-402.)

> are supported by substantial evidence; and since the party challenging those findings has the burden of demonstrating otherwise, here the City must establish that the administrative record does not contain substantial evidence to support the Board's finding that there is no feasible alternative to the Project Site.

(*City of Hesperia, supra,* 37 Cal.App.5th at p. 761.) This standard applies with equal force to this case.

While the City complains about the Tidewater parameters used for environmental and technical criteria and the scoring, it does not provide any reason for the court to conclude that deviation from other studies' methodologies was without any foundation, not credible, or unreasonable. The City argues that Tidewater did not provide any support for its scoring and weight methodology, but the City fails to discuss the analytical route taken by Tidewater in choosing the parameters that were evaluated and the basis for assigning the scoring ranges for particular parameters, and weighing factors as it did. (AR 4:54-59.)[16]

The City also fails to address the Tidewater discussion that subjective weighting factors were determined according to relative importance for a successful system location. The Tidewater Memorandum explained that the reason "technical parameters"

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[16] The Tidewater Memorandum evaluated the following criteria for a solar system producing similar quantities of electricity as the previously approved system: economic, environmental, social, and technical. Within each criteria, specific parameters were established. (AR 4:54-59.) For example, "technical" included parameters such as shading, elevation, and average annual cloudy days. (AR 4:54.) With respect to elevation the Tidewater Memorandum provided the following discussion:

> Atmosphere thickness and composition influence the availability of both short and longwave energy of the sun and earth, respectively. The lower the evaluation of a region from sea level, the greater the atmosphere thickness; therefore, a PV system's site location with respect to evaluation influence the system efficiency (Noorollahi et al., 2016). Those site locations located at less than 2,500 feet amsl were assigned a value of 0. Those site locations ranging from 2,500 to 5,000 feet amsl were assigned a value of 5, and those site locations greater than 5,000 amsl were assigned a value of 10.

(AR 4:58.)

were given the largest weighted factor was the ability to produce the requisite, annual electrical output needed for a viable system. (AR 4:42, 61.)

In making its arguments, the City also fails to discuss all the relevant evidence on which the District's findings rely, including the RES-BCT Project Review prepared by Sage Energy Consulting, Inc. (AR 4:634-635, 637.)[17]

The District's report provided a detailed discussion of its investigation of renewable energy options "to offset costs and energy requirements associated with current and projected water and wastewater demands." (AR 4:17-22.) Evaluation was based on project objectives related to substantially offsetting existing and future electricity costs. (AR 4:16, 22-23.) The District considered other alternative forms of renewable energy, including solar thermal, hydroelectric energy, wind, geothermal, and digester gas, and provided reasons for selecting solar technology and rejecting other alternatives based on the project objective to substantially offset existing and future electricity costs. (AR 4:29-32.)[18]

The District considered the following alternatives: no project, reapplying to the City for approval of the project, and alternative locations. (AR 4:32-42.) The District provided a reasoned discussion and analysis why the "no project" and "re-apply" proposals were determined infeasible in terms of the project objectives. (AR 4:32-34.)

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[17] Sage evaluated six possible sites for location of solar systems consistent with the District's goal to offset electrical costs. It also reviewed the project proposal at Hesperia Farms, "including the impact of changes in the RES-BCT tariff on the projected savings in electrical costs over the life of the Project." (AR 4:634.) In doing so, it "evaluated the amount of RES-BCT bill credits generated and associated Benefiting Account credit capacity." (*Ibid.*) Sage also considered different systems, including "wind speed data for potential wind energy systems in the area of [the District's] potential project sites." (*Ibid.*) It did so in relation to the District's intent to proceed with a project to "offset the electrical energy cost of the operation of their water treatment, pumping, and management facilities." (*Ibid.*) Sage discussed the reasons that other systems, such as a wind energy, were not feasible. (AR 4:634-635.) Sage also reviewed the Tidewater Memorandum and found that it adequately identified potential RES-BCT project sites. (AR 4:637.)

[18] Insofar as the RES-BCT is not available for the Hesperia Farms site, the analysis of these alternative forms of renewable energy may well be different.

For example, with the re-apply option, the District discussed that an alternative must be "'capable of being accomplished in a successful manner within a reasonable period of time'" and, given the history of the project, every indication was that a new application to the City would be denied and a waste of further time and resources. (AR 4:34, quoting Gov. Code § 53096, subd. (c).) Substantial evidence supports the District's conclusion.

In considering alternative sites, the District discussed the feasibility of acquiring new sites and evaluated the use of other existing sites. (AR 4:35-42.) Its analysis, including a discussion of the findings in the Tidewater Memorandum and Sage Report, concluded that there was no feasible alternative that met the project objective to substantially reduce the District's existing and future energy costs within a reasonable period. (AR 4:35-42.) The analytical route for the conclusion was provided. The City's attacks on the Tidewater parameters are insufficient to demonstrate that substantial evidence does not support the District's feasibility finding, assuming that the project qualifies for the RES-BCT program.

The City also argues that the Tidewater analysis did not take into account the new analysis of the Mojave River Dam by the Army Corps. of Engineers. But the City failed to present this evidence at the public hearing. There is no basis to take judicial notice of this document, and the City did not move to augment the administrative record to include it. Therefore, the City's argument on this issue is disregarded.

The City asserts that the Sage report's economic analysis of the different sites fails to show how the comparison numbers were set and why size limitations were placed on alternatives. The City takes issue that the alternative at "the Flats" site is sized smaller at roughly one third the size of the proposed project even though the Flats is a 4.45-acre site. (Reply, pp. 5:16-6:7.)

The District has not had an opportunity to respond, because the City first raised the argument in its Reply brief. Nevertheless, the argument does not demonstrate that substantial evidence fails to support the District's findings. Five acres is minimum acreage for the proposed project. (AR 4:37, 47.) The Flats site is 4.5 acres. (AR 4:51.) The Sage Report discussed that to be economically viable, an RES-BCT system needs to be at least 350 kW DC and requires 3.0 acres. (AR 4:636.) Related to the Flats, the Sage Report states:

> Although the Flats site is currently intended for use in the construction of a new operations building and yard, we evaluated it in its current condition as raw land. The Flats site is not large enough to accommodate a PV system large enough to generate significant electricity cost savings. Sage found that a 365 kW-DC single-axis tracking PV system at the site would provide less than $37,000 of annual savings, 6.5% of LACSD annual energy costs. In addition, the Flats site has potential issues with soils and interconnection that could jeopardize the viability of the site to host solar. An annotated SCE DRPEP map is shown in Figure 1 below with nearest access to distribution approximately 1/3 of a mile which would add ~$250,000 to interconnection costs, which would render the project financially unviable. Photographic evidence shows a potential 12kV spur along Hospital Road to the corner of Rouse Ranch Road that is not indicated on the DRPEP map. (AR 4:638.)

The Tidewater Memorandum discussed that the Flats site has been committed to the new Field Operations Department building and corporate yard. The Flats was included "in its current condition as existing vacant land; however, once construction begins, the site would only be appropriate for potential rooftop and partial use." (AR 4:51.) In rejecting the Flats site as a viable alternative, the District noted that it has committed the site "to its Field Operations Department building and corporate yard and has already incurred costs in pursuit of that use." (AR 4:39.) When taken as a whole,

substantial evidence supports rejection of the Flats site as a feasible alternative in light of the project objective.

Finally, the City asserts that the studies lack credibility because there was not an adequate process to give the public time to review the studies and hire their own consultants. But the District followed the public notice hearing requirements of Government Code section 53096, subdivision (a), which provides for at least ten days prior notice. The City's argument about the notice period and procedures needs to be addressed with the Legislature, not the court. (*Estate of Horman* (1971) 5 Cal.3d 62, 77.)

E. Institutional Bias as an Improper Influence is Not Shown by the Record.

The City contends that "institutional bias" influenced the feasibility finding, because the District had an ongoing relationship with the consultant it hired to conduct the analysis. But there is no basis to take judicial notice of the contracts the City relies on to support this argument. The court's inquiry under section 1094.5 is limited to the administrative record. (*City of Hesperia, supra,* 37 Cal.App.5th at p. 766.)

The City also argues that the District's decision is particularly vulnerable to charges of "institutional bias" because its decision is to proceed with essentially the same project that was previously struck down. Citing *Residents Ad Hoc Stadium Committee v. Board of Trustees of the California State University and Colleges* (1979) 89 Cal.App.3d 274, 284, the City argues that there is a *post hoc* rationalization, given that the District had spent $800,000 on the project by March 2018. (AR 63:4319.) The City's argument is speculative, not based on evidence.

In *Residents Ad Hoc Stadium Committee,* the court discussed that CEQA assumes as inevitable an institutional bias within an agency proposing a project, and

that Public Resources Code sections 21000 and 21100 impose procedural requirements to insure that the decision maker does not fail to note the facts and understand arguments advanced by opponents. The City's argument that the precise process detailed in CEQA must be followed to avoid an "institutional bias" claim is without legal support. As previously explained, the requirements for the District's feasibility consideration are set forth in *City of Hesperia*. The City does not provide any legal analysis why the public hearing requirements of Government Code section 53096, subdivision (a), and the procedures set forth in *City of Hesperia* are insufficient to address "institutional bias" claims and to avoid *post hoc* rationalization.

Nothing in Government Code section 53096, subdivision (a), precludes using a paid consultant to prepare the feasibility analysis. The administrative record demonstrates that the District performed an independent review of the consultants' reports in drafting its Alternatives Report. (AR 4:15-43.)

Finally, the City asserts that the self-serving nature of the studies relied on by the District is demonstrated by Tidewater's introduction and background sections that advocate for the site chosen in 2014. The City argues, "There is no questioning of the analytical gaps in the facts, criteria used for comparison, and the ultimate conclusions." (Opening Br. p. 16:9-10.) But the City does not provide any analysis of what statements were made in the introduction and background that demonstrate "institutional bias." Its conclusory argument is without support. (*Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515, 529 ["'[A]n attack on the evidence without a fair statement of the evidence is entitled to no consideration when it is apparent that a substantial amount of evidence was received on behalf of the respondent.' [Citation.]"].)

V

The City's CEQA Challenge is Unsupported.

A. Further Environmental Review is Not Required Due to Significant New Information.

The City asserts that new information requires supplemental environmental review under Public Resources Code section 21166 and Guidelines section 15162.

In general, once an EIR or negative declaration has been adopted for a project, the lead agency is not required to prepare a subsequent or supplemental EIR unless one of the following exists:

> (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.
>
> (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.

(Pub. Resources Code, § 21166; see also Guidelines, § 15162, subds. (a) and (b).)

Guidelines section 15162, subdivision (c) provides: "Once a project has been approved, the lead agency's role in project approval is completed, unless further discretionary approval on that project is required." (Guidelines, § 15162, subdivision (c).) The CEQA review process is not complete until all discretionary approvals are granted.

"Whether an initial environmental document remains relevant despite changed plans or circumstances … is a predominately factual question" for the agency to first answer. "A court's task on review is then to decide whether the agency's determination

is supported by substantial evidence; the court's job ""is not to weigh conflicting evidence and determine who has the better argument."" [Citation.]" (*Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 953.)

In 2017, in an effort to obtain the City's approval of a General Plan Amendment and CUP, the proposed solar farm project was moved 660 feet north to comply with City zoning requirements that preclude solar farms within 660 feet of an agricultural or residentially designated property. (AR 41:2636-3106; AR 42:3104-3106; AR 44:3121-3123; AR 48:3654-3656.) As moved, the project has the same design and layout, but requires additional trenching to install electrical conduit to connect to SCE facilities. (AR 82:6966.) As part of seeking a General Plan Amendment and CUP, the District adopted an Addendum to the IS/MND. (AR 42:3104-3114; 44:3124-3128.) Under the Addendum, the District found the change in the project site would not result in any new significant environmental effects triggering the need for further environmental review. In August 2017, the District filed and posted the Notice of Determination. (AR 1:1-3; 42:3105-3106.)

The current project involves essentially the same solar farm project proposed in 2017, with the issue being the qualified exemption under Government Code section 53096, subdivision (a). The District's June 2, 2020, Notice of Public Hearing stated that the Board was holding a public hearing to consider adopting a Resolution that there is no feasible alternative to the Hesperia Farms project pursuant to Government Code section 53096. (AR 100:7677-7679.) The Agenda listed a similar description of the public hearing related to adopting Resolution No. 2020-04. (AR 81:6961.) In the

District's June 2020 Resolution, the District noted that a CEQA review was completed for the project in 2017. (AR 3:11-12.)

On July 2, 2020, following the feasibility hearing, the District filed and posted a Notice of Determination stating that the project approved in August 2017 was fully analyzed in the prior MND and Addendum, concluding that the project would not have a significant effect on the environment. (AR 2:7-9.)

The Staff Report regarding Resolution No. 2020-04 discussed that on August 8, 2017, the Board adopted Resolution No. 2017-15 approving and adopting Addendum No. 1 to the Final MND for the alternative site under CEQA and approving the alternative site. It discussed the finding that the change in location would not result in any new significant environmental effect triggering the need for further environmental review under Public Resources Code section 21166 or State CEQA Guidelines section 15162. It also stated that the alternative site is subject to the same mitigation measures as the original site. (AR 82:6966.) The June 2020 Alternatives Report discussed the prior environmental review process and adoption of the Addendum in 2017. (AR 4:19, 21.)

The City's comments, submitted before the public hearing, raised an issue about the environmental document failing to address "feasible alternatives." (AR 101:7707-7708.) But the City's argument in its Opening Brief is not based on the failure to address alternatives as part of CEQA review. Instead, the City's challenge is based on significant new information that requires further environmental review.

The City now claims that the District's Addendum to the MND is deficient because it did not consider significant new information about the risk of the Mojave River Dam failing. It asserts that the record lacks a discussion of this new information

published in November 2019 in which the Army Corps' News Release warned of greater risk from the Mojave River Dam failing. The City contends the District is proceeding in a manner not required by law because it failed to consider this new information and instead relied on the 2017 Addendum.

The District argues that it complied with CEQA when it adopted the 2017 Addendum. The District contends that the City fails to demonstrate the existence of "new information" under Public Recourses Code section 21166 and Guidelines section 15162, subdivision (a). According to the District, the City failed to exhaust its administrative remedies; judicial notice cannot be taken of the information on which the City relies; and even if the City's claim is not barred by the failure to exhaust, there are no subsequent discretionary approvals to trigger CEQA review.

B. The City Failed to Exhaust Administrative Remedies.

The District is correct that the City failed to exhaust its administrative remedies on this issue.

The City argues in its Reply that the District's decision to find alternatives infeasible and approve the project under Government Code section 53096 is a discretionary approval triggering the need for a CEQA determination. But this was not the argument raised in the City's Opening Brief. The argument raised in the Opening Brief was directed to asserting that the District failed to consider new significant information, rendering reliance on the 2015 MND and 2017 Addendum deficient.

The court considers the City's argument made on reply only as it relates to the District's exhaustion of administrative remedies defense. In other words, to the extent the City asserts in its Reply that the District failed to make required CEQA findings in approving the project, that argument is waived. But to the extent it is offered as a

reason that the significant new information argument was not raised earlier, it is considered.

The 2020 approval is a discretionary approval to which CEQA applies, requiring consideration whether one of the three triggering events for a supplemental or subsequent EIR exists. Substantial evidence supports a conclusion that the solar energy project as described and considered in the 2017 Addendum is the same project approved in 2020. The only change in circumstance was the manner under which project approval was sought: the District's finding that the qualified exemption under Government Code section 53096 applied rather than the City approving the District's application for a General Plan Amendment and CUP. The question then is whether the "significant new information" factor of Public Resources Code section 21166, subdivision (c) and Guidelines section 15162, subdivision (a)(3), triggers subsequent CEQA review.

Nothing in CEQA requires an agency to make an explicit finding that the original environmental document retains some degree of relevance. (*San Mateo Gardens, supra,* 1 Cal.5th at p. 953, fn.4.) "When an agency considers a subsequent discretionary action on a project, it will know whether changes are proposed in the project but may be unaware of changes in circumstances or new information of importance to the project. Nothing in CEQA or the Guidelines requires the agency to conduct an investigation to ferret out changes in circumstances or new information. If the agency becomes aware of such factors, however, it should then consider all the relevant facts and explicitly decide whether conditions exist that necessitate further environmental review. If a project opponent is aware of changed circumstances or new information, bringing that material to the agency's attention might obligate the agency to

conduct an investigation to determine whether further environmental review is required." (Kostka & Zischke, Practice Under the California Environmental Quality Act (2d. ed. Cal. CEB) § 19.37.)

The District made an implied finding of no changes to the project that require further environmental review under Public Resources Code section 21166. The District's 2020 Alternatives Report states: "No legal challenges were filed under CEQA against the Original Site or the Alternative Site where the Proposal would be located. Thus, the Final MND and Addendum are presumed valid under Public Resources Code sections 21080.1 and 21167.2 and State CEQA Guidelines section 15231." (AR 4:29.)

"CEQA does not set forth any particular procedure to support an agency's decision that a new EIR [or MND] is not required. CEQA does not require an initial study or public hearing in these circumstances." (*Committee for Re-Evaluation of T-Line Loop v. San Francisco Municipal Transportation Agency* (2016) 6 Cal.App.5th 1237, 1256.) As explained in Kostka & Zischke, Practice Under the California Environmental Quality Act, supra, § 19.48: ""There is no specific requirement in CEQA or the CEQA Guidelines that public notice and an opportunity to comment be provided in connection with a determination of whether a subsequent or supplemental EIR is required for a project." (Citing Pub. Resources Code, § 21166; Guidelines, § 15162; *A Local & Regional Monitor* (*ALARM*) *v. City of Los Angeles* (1993) 12 Cal.App.4th 1773, 1804 (holding that CEQA does not require a public hearing or public comment before a determination whether a subsequent or supplemental EIR is required); *Concerned Citizens of South Central L.A. v. Los Angeles Unified School Dist.* (1994) 24 Cal.App.4th 826, 845.)

In *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 701-702, the Court found the exhaustion requirement of Public Resources Code section 21177 did not apply where "there was no clearly defined administrative procedure for petitioners to resolve their concerns about the project as it was finally configured." But in several other cases, the Court has come to a contrary conclusion. (*ALARM, supra,* 12 Cal.App.4th at p. 1804 ["At no time during the administrative process did anyone … suggest that a separate public hearing was required."]; *Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385, 1394-1395 [finding the exhaustion requirement applied where regularly schedule meetings open to the public were held, even if not "duly noticed public hearings under CEQA"].)[19] In *Bridges v. Mt. San Jacinto Community College District* (2017) 14 Cal.App.5th 104, 117, the Court followed *Mani Brothers,* concluding that the CEQA exhaustion requirement was triggered even though there was not a public hearing held under CEQA, where there was a regularly scheduled meeting that was open to the public.

There is no dispute that a public hearing on the District's consideration of the qualified exemption was posted as required. While the City argues that the District failed to provide adequate notice that an environmental decision would be made, a public hearing is not required for an implied finding of no subsequent environmental review. In addition, the City was able to comment and generally asserted that the CEQA document failed to address feasibility alternatives. (AR 101:7707-7708.) The City had an opportunity during the administrative proceeding to raise its CEQA objection

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[19] Public Resources Code section 21177, setting for the exhaustion requirement, provides at subdivision (e): "This section does not apply to any alleged grounds for noncompliance with this division for which there was no public hearing or other opportunity for members of the public to raise those objections orally or in writing before the approval of the project, or if the public agency failed to give the notice required by law."

that significant new information existed but failed to do so. It has failed to show CEQA's exhaustion exception applies. This issue is barred by the failure to exhaust administrative remedies.

C. There is No Basis for Finding the Existence of Significant New Information.

In *Bridges*, even though the court found the failure to exhaust, the court went on to evaluate the merits of the CEQA claim as if exhaustion did not apply. (*Bridges, supra,* 14 Cal.App.5th at pp. 118-126.) Here, even if the exhaustion conclusion did not preclude the City's claim, the CEQA argument lacks merit.

First, there is no statutory basis for the City's request for judicial notice of the November 2019 News Release, and the City does not explain why it failed to seek to augment the administrative record prior to briefing on the merits.

But even if the court were to consider the News Release, it is insufficient to trigger subsequent environmental analysis. "CEQA analysis is concerned with a project's impact on the environment, rather than with the environment's impact on a project and its users or residents." (*California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369, 378.) CEQA does not require analysis of the impact of existing environmental conditions on a project's future users or residents. (*Id.* at p. 377.) Guidelines section 15126.2, subdivision (a), is consistent with the ruling in *California Building Industry Association*.

Given that an MND is at issue, the News Release's discussion of a new assessed increased risk of flooding during an extreme flood event does not constitute substantial evidence in favor of a fair argument that a new significant environmental impact from the project may occur. (*San Mateo Gardens, supra,* 1 Cal.5th at p. 959.) The increased flood assessment risk is not new information of substantial importance

because it does not constitute substantial evidence that the project may exacerbate the existing flooding risk. Therefore, the City's CEQA argument is without merit.

VI

Conclusion

For the reasons explained above, the petition for a writ of mandate is denied.

Dated: October 1, 2021

David Cohn
Judge of the Superior Court

City of Hesperia v. Lake Arrowhead Community Services District, et al.
San Bernardino County Superior Court No. CIVDS2019176

PROOF OF SERVICE

I, the undersigned, am a citizen of the United States and employed in San Diego County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 655 West Broadway, 15th Floor, San Diego, California 92101. On October 1, 2021, I served a copy of the within document(s):

[PROPOSED] JUDGMENT DENYING PETITION FOR WRIT OF MANDATE AND CAUSES OF ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at San Diego, California addressed as set forth below.

☐ by placing the document(s) listed above in a sealed FedEx envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a FedEx agent for delivery.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☒ by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 1, 2021, at San Diego, California.

Wanda Roybal

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EXHIBIT 2

Filed 7/12/23

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

CITY OF HESPERIA, Plaintiff and Appellant, v. LAKE ARROWHEAD COMMUNITY SERVICES DISTRICT et al., Defendants and Respondents; SUNPOWER CORPORATION SYSTEM, Real Party in Interest and Respondent.	D079956 (Super. Ct. No. CIVDS2019176)

APPEAL from a judgment of the Superior Court of San Bernardino County, David S. Cohn, Judge. Affirmed.

Aleshire & Wynder, Eric L. Dunn, June S. Ailin, and Nicholas P. Dwyer for Plaintiff and Appellant.

Best Best & Krieger, Amy E. Hoyt and Amanda Daams; Stoel Rives and Lindsay D. Puckett for Defendants and Respondents Lake Arrowhead

Community Services District and Board of Directors of Lake Arrowhead Community Services District.

Allen Matkins Leck Gamble Mallory & Natsis and Emily L. Murray for Real Party in Interest and Respondent, SunPower Corporation System.

I.

INTRODUCTION

This appeal arises from a second lawsuit brought by the City of Hesperia (the City) against respondents Lake Arrowhead Community Services District and the Board of Directors of Lake Arrowhead Community Services District (jointly, the District) regarding a proposed 0.96-megawatt solar photovoltaic project (the Solar Project) that the District has been planning to develop on six acres of a 350-acre property it owns that is known as the Hesperia Farms Property.[1] The Hesperia Farms Property is located within the City's municipal boundary and is generally subject to the City's zoning regulations.

The District began considering the development of the Solar Project with an eye toward the use of a state renewable energy self-generation bill credit transfer program (the RES-BCT program), as codified in Public Utilities Code[2] section 2830. The RES-BCT program permits local governmental entities to offset the cost of their energy consumption at one

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1 The first lawsuit filed by the City against the District regarding the Solar Project was *City of Hesperia v. Lake Arrowhead Community Services District et al.*, San Bernardino County Superior Court case No. CIVDS1602017, filed in February 2016 (the 2016 lawsuit).

2 Further statutory references are to the Public Utilities Code unless otherwise indicated.

location by receiving bill credits for the generation of renewable energy at a different location. (See § 2830, subs. (a)(1), (a)(2), (a)(4) & (c).)

In August 2015, in anticipation of its use of the bill crediting system provided for under the RES-BCT program, the District entered into a Public Utilities Commission Rule 21 Generator Interconnection Agreement for Exporting Facilities (the Interconnection Agreement) with Southern California Edison (SCE), the investor-owned utility company that provides energy service to all of the District's facilities. The Interconnection Agreement authorizes the Solar Project's connection to SCE's electrical grid distribution system and provides that the District will receive a credit for its generation of electrical energy at the RES-BCT tariff rate that it may use to offset the cost of energy it consumes at other sites.

The District first approved its Solar Project in December 2015, after determining that the project was either absolutely exempt from the City's zoning regulations under Government Code section 53091, or qualifiedly exempt under Government Code section 53096.[3] Displeased with the District's determination that it was not required to comply with the City's zoning regulations, the City filed an action against the District seeking a writ of mandate prohibiting the District from further pursuing the Solar Project. The City challenged the District's approval of the Solar Project on two

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[3] Government Code section 53091, subdivision (e) provides an absolute exemption from local zoning regulations for "the location or construction of facilities . . . for the production or generation of electrical energy"—unless those facilities are "for the storage or transmission of electrical energy," in which event the local zoning ordinances apply. Government Code section 53096, subdivision (a) provides a qualified exemption for an agency's proposed use upon a showing that (a) the development is for facilities "related to storage or transmission of water or electrical energy" and (b) four-fifths of the agency's members "determine[ ] by resolution" that "there is no feasible alternative to [the agency's] proposal."

grounds: (1) that the District was without statutory authority to construct and operate the Solar Project, and (2) that the Solar Project was not exempt from the zoning regulations under either of the Government Code provisions on which the District had relied. At the conclusion of the trial court proceedings, the court determined that the District possessed the authority to develop and operate the Solar Project but agreed with the City that the District was not exempt from the City's zoning regulations under either Government Code section 53091 or Government Code section 53096. While the District appealed the trial court's judgment, the City did not cross-appeal to challenge that portion of the trial court's ruling that the District possessed the authority to construct and operate the Solar Project.

This court affirmed the trial court's judgment in *City of Hesperia v. Lake Arrowhead Community Services Dist.* (2019) 37 Cal.App.5th 734 (*Hesperia I*). In *Hesperia I*, we determined that the District's Solar Project was not exempt from the City's zoning regulations under Government Code section 53091's absolute exemption, or under Government Code section 53096's qualified exemption. (*Hesperia I*, *supra*, at pp. 758–759, 760–765.) We concluded, however, that Government Code section 52096's qualified exemption did not apply to the District's approval of the Solar Project only because the District had failed to provide substantial evidence to support its conclusion that there was no other feasible alternative to its proposed location for the Solar Project. This result left open the possibility that the District could undertake further analyses and show that there is no feasible alternative to the Solar Project's proposed location—this time with substantial supporting evidence in the record—in order to avoid application of the City's zoning ordinances.

In response to *Hesperia I*, the District began a process to address the evidentiary failures in the administrative record in connection with its no-feasible-alternative determination. The District retained experts to conduct technical analyses and develop reports evaluating the feasibility of other potential sites for developing a solar energy facility, and District staff prepared a feasibility study. In June 2020, after these reports and studies had been completed, the District's board members unanimously adopted a resolution concluding that there is no feasible alternative to the Hesperia Farms Property location for developing a solar energy facility.[4]

A few months after the District made its second no-feasible-alternative determination with respect to the Solar Project, the City filed a second petition for writ of mandate and complaint challenging the Solar Project. In this second action, the City asserts four causes of action against the District. In the first cause of action, the City challenges the District's eligibility to use the RES-BCT program with respect to the Solar Project as proposed on the Hesperia Farms Property; specifically, the City alleges that the Hesperia Farms Property is not within the District's "geographical boundaries" as required by section 2830. In the second cause of action, the City alleges violations of the California Environmental Quality Act (CEQA). And in the third case of action, the City challenges the sufficiency of the evidence to support the District's no-feasible-alternative determination under Government Code section 53096's zoning exemption. In a fourth cause of

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[4] However, at this point in time, the District's members approved an alternate site for the Solar Project on the Hesperia Farms Property, in that the proposed project is now to be located 660 feet north of the southern property line, rather than at the southern property line. This slight adjustment to where the Solar Project would be placed on the Hesperia Farms Property was done so that the Solar Project could comply with one particular aspect of the City's zoning ordinance.

action, the City seeks declaratory relief predicated on the first and third causes of action.

After full briefing and argument from the parties, the trial court ultimately denied the City's petition for a writ of mandate. The court rejected the City's CEQA challenge and concluded that the administrative record contains substantial evidence to support the District's no-feasible-alternative determination. The court also determined that the City's challenge to the Solar Project's eligibility under the RES-BCT program was barred by the doctrine of laches. The court entered judgment in favor of the District.

The City now appeals from that judgment. On appeal, the City argues that the trial court erred in concluding that its challenge to the Solar Project's eligibility under the RES-BCT program was barred by laches. The City further argues that if this court concludes that the trial court's laches ruling was erroneous, we should also conclude that the Solar Project, as conceived of and approved by the District, fails to meet the requirements of the RES-BCT program because the proposed solar farm would not be "within the geographical boundary" of the District, as required by the language of section 2830. The City also argues that because the Solar Project does not meet the "geographical boundary" requirement of the RES-BCT program, the District's determination that other potential locations were not feasible was not supported by substantial evidence because the District relied in part on the fact that many of those alternative locations would not be eligible for RES-BCT program in rejecting those alternatives. The City contends that the Hesperia Farms Property *also* should not have been considered to be an

eligible location for an energy generation facility under the RES-BCT program in the District's no-feasible-alternative analysis.[5]

In response to the City's appeal, the District urges this court to affirm the trial court's laches ruling while also providing a number of alternative grounds to support affirming the trial court's determination that the City is unable to prevail on its first cause of action. The District also responds that even if this court concludes that the trial court's laches ruling is unsupported *and* if this court rejects all of the District's alternative procedural grounds for affirming the trial court's determination with respect to the first cause of action, the trial court's determination should still nevertheless be affirmed on the ground that the Solar Project, as proposed on the Hesperia Farms Property, fulfills the requirements of the RES-BCT program, including the requirement that the energy producing facility be located "within the geographical boundaries" of the District. The District also contends that its determination that there are no feasible alternatives to the Solar Project as envisioned at the Hesperia Farms Property is supported by substantial evidence in the administrative record.

We conclude that the trial court did not err in rejecting the City's petition for writ of mandate. We therefore affirm the judgment.

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[5] We note that by narrowing its appeal to the issues that we identify in the text, the City has conceded the correctness of the trial court's ruling with respect to the City's second cause of action, in which the City asserts a claim under CEQA, as well as that aspect of the fourth cause of action for declaratory relief in which the City seeks a declaration regarding the CEQA claim.

II.

BACKGROUND

A. *Background regarding the District and the Hesperia Farms Property*

Established in 1978 under the Community Services District Law (Gov. Code, § 61000 et seq.), the District provides water and wastewater services to customers within the unincorporated community surrounding Lake Arrowhead.[6] The topography of the Lake Arrowhead area requires the pumping of water, wastewater, and recycled water over significant elevation changes. The District operates and maintains 40 pump stations and requires the recharging of over 1,000-acre feet of treated water at a percolation facility that the District operates at the Hesperia Farms Property. As a result, the District's operations are energy intensive; on a per-water-unit basis, the District is one of the highest energy users in the nation.

The 350-acre Hesperia Farms Property is located approximately eight miles north-northwest of Lake Arrowhead. The Hesperia Farms Property consists of 10 adjacent parcels; eight of the parcels are located within the southeastern portion of the City, and two are located just outside the City's boundary. The District has owned the property since the 1970's; for decades, the District has pumped treated effluent from its wastewater treatment facilities to the Hesperia Effluent Management Site facility located at the Hesperia Farms Property. The treated wastewater is conveyed through the District's 10-mile outfall pipeline to four percolation ponds on the Hesperia Farms Property, through which it is reintroduced into the Mojave River groundwater basin.

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6 The District serves approximately 8,000 water customers and 10,500 wastewater customers. The District's boundary for its provision of water service differs from its boundary for its provision of wastewater service.

Since 2010, the Local Agency Formation Commission for San Bernardino County—the entity tasked with establishing and authorizing special districts like the District—expanded the District's "sphere of influence" to include the Hesperia Farms Property.[7] However, the Hesperia Farms Property is not located within either the District's water service area or its wastewater service area.

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7 "Sphere of influence" is a term defined in the Cortese–Knox–Hertzberg Local Government Reorganization Act of 2000 (the Local Government Reorganization Act) as follows: " 'Sphere of influence' means a plan for the probable physical boundaries and service area of a local agency, as determined by the [local agency formation] commission." (Gov. Code, § 56076.) The Local Government Reorganization Act was enacted to encourage orderly growth and development in California, and the Reorganization Act identifies an "important factor" in achieving the policy goal of orderly growth and the efficient extension of government services as "the logical formation and determination of local agency boundaries." (Gov. Code, § 56001.) A " '[l]ocal agency' " includes a city, a county, and a district/special district. (Gov. Code, §§ 56054, 56036.) The Local Government Reorganization Act provides for the establishment of a local agency formation commission in each county, which is the administrative agency charged with the responsibility of determining the boundaries of cities and districts. (*City of Patterson v. Turlock Irrigation Dist*. (2014) 227 Cal.App.4th 484, 492 (*City of Patterson*), citing Gov. Code, §§ 56325-56337, 56375, 56301.) A local agency formation commission's authority over the boundaries of local agencies includes the power to approve a change in the boundaries of an existing district (*City of Patterson*, at p. 492, citing Gov. Code, § 56375, subd. (a)(1) [power to approve or disapprove proposals for changes of organization]; § 56021, subd. (c) [" 'Change of organization' " includes annexation to city or district]), as well as the power to "develop and determine the sphere of influence of each city and each special district, as defined by Section 56036, within the county and enact policies designed to promote the logical and orderly development of areas within the sphere." (Gov. Code, § 56425.)

B. *The origination, initial planning, and approval of the proposed Solar Project*

In response to Congressional authorization provided in 2007 and 2010, the United States Bureau of Reclamation conducted a study to evaluate potential water, wastewater, and alternative energy solutions to meet the District's increasing needs. The Bureau of Reclamation's study concluded that the expected demand for water would increase and exceed the District's available water supply sources by 2030, and that there would be a corresponding increase in the District's energy needs to deal with the projected increase in water and wastewater demands. The report included discussion of a SunPower Corporation evaluation of the Hesperia Farms Property that indicated that the site had a "high potential for a solar installation." The report further suggested that "[a]ssuming [SunPower's] calculations are correct and valid, a full evaluation of the site's potential solar development should be conducted."

During 2014 and 2015, in response to this report, the District considered design and financing options for developing a solar project for the purpose of offsetting the energy costs associated with its operations and facilities. For example, in January 2014, the District received an analysis from an outside engineering consultant regarding the potential development of solar power at its Hesperia Farms Property. (*Hesperia I*, *supra*, 37 Cal.App.5th at p. 742.) Then, in June 2014, the District created a solar power alternatives ad hoc committee, which eventually considered presentations from three solar power vendors for a potential solar project. (*Ibid*.)

The District ultimately settled on an option for installing a .96 megawatt solar project on approximately six of the 350 acres that comprise the Hesperia Farms Property—i.e., the Solar Project. The District determined that utilization of section 2830's RES-BCT Program would

provide for the most beneficial use of a solar project developed on the Hesperia Farms Property, given that the purpose of the program is to allow a local government such as the District to utilize raw or minimally developed land to generate energy from alternative sources such as solar or wind, and then use credits from the generation of energy on that land, which typically does not have a significant energy burden, to offset the energy costs of local government facilities elsewhere that have a greater energy burden.

In November 2014, District staff began to meet with members of the City's planning department and the City's manager to discuss the permitting process that would be required of the District to develop the Solar Project on the Hesperia Farms Property. At that time, City staff indicated a concern to the District that the Hesperia City Council would be disinclined to approve a permit for a solar project at that location, given that the City Council had repeatedly denied other proposed solar projects.[8] The District nevertheless undertook the environmental review process under the CEQA (Pub. Res. Code, § 21000 et seq.) for the Solar Project.

On May 20, 2015, during the CEQA review process, the City sent a comment letter to the District regarding a proposed initial study and mitigated negative declaration for the Solar Project. In that letter, the City requested, among other things, that the District request from the City a "general plan amendment and zone change," and also that the District relocate the Solar Project 660 feet to the north in order for the project to comply with a City ordinance requiring that solar systems be located at least

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8 As of 2018, the District had been unable to identify a single "ground-based solar farm" that had been approved by the City and constructed to completion.

660 feet from agriculturally designated property.[9] Although the City also raised other minor issues in its May 20, 2015 letter, it did not raise any question as to the eligibility of the Hesperia Farms Property for generating alternative energy for use as a credit toward energy use at other District facilities under the RES-BCT program.

At a publicly noticed meeting in August 2015, the District voted to authorize its general manager to execute a generator interconnection agreement with SCE under the RES-BCT program for the Solar Project. The City voiced no opposition to the District's authorization of an interconnection agreement with SCE in connection with the planned Solar Project. That same month, the District entered into the Interconnection Agreement with SCE, which authorized an anticipated solar project at the Hesperia Farms Property to be connected to SCE's electrical grid distribution system; pursuant to this agreement, the District would be able to credit its energy generation from a Hesperia Farms Property solar facility toward its consumption of energy at other District facilities.

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9 As was relevant to the City's requested changes to the District's proposed Solar Project, the Hesperia Municipal Code section 16.16.063.B sets forth a limitation with respect to the siting of solar farms, providing in relevant part: " 'Solar farms shall only be allowed on nonresidential and nonagricultural designated properties with approval of a conditional use permit by the planning commission. Solar farms shall not be permitted within six hundred sixty (660) feet of a railway spur, any interstate, highway, or major arterial, arterial, or secondary arterial roadway; *or any agricultural* or residentially *designated property*.' " (*Hesperia I*, *supra*, 37 Cal.App.5th at p. 742, italics added.) The proposed Solar Project was to be located on a parcel that was zoned as "Rural Residential" and designated as "Rural Residential 0-0.4 units per acre" under the City's general plan. (*Id*. at p. 741.) In addition, according to the City, the District's proposed siting of the Solar Project was within 660 feet of an agriculturally-designated property to the south. (*Id.* at p. 742.)

After considering the comments from the City and others in response to the proposed initial study and mitigated negative declaration for the Solar Project, the District gave notice of " 'a public hearing at which the Board may make findings pursuant to Section 53096 of the Government Code that there is no feasible alternative to the proposed location of the solar project at the Hesperia Farm Solar Photovoltaic Project Site and that, by four-fifths vote of the Board, the City of Hesperia's zoning ordinance is, therefore, rendered inapplicable.' " (*Hesperia I*, *supra*, 37 Cal.App.5th at p. 743.) In response to this notice of potential action by the District, on December 14, 2015, the City repeated its original objections to the Solar Project as outlined in its May 2015 letter—i.e., that the Solar Project required an amendment to the City's general plan and a change in location to avoid a violation of Hesperia Municipal Code section 16.16.063.B. (*Ibid*.) The City also expressed its opposition to the District's proposed actions that might allow the District to avoid application of the City's local land use regulations. (*Ibid*.) The City did not question the eligibility of the Hesperia Farms Property for use under the RES-BCT program.

On December 15, 2015, the District adopted the initial study and mitigated negative declaration (Final MND) and approved the Solar Project for the originally-planned site—i.e., a location on the Hesperia Farms Property that was within 660 feet of the neighboring parcel designated for agricultural use (the Original Location). The publicly circulated Final MND, the staff report for the District's board of directors agenda item related to the Solar Project approval, and the District's resolution adopting the Final MND all indicated that the Solar Project was being developed to generate alternative energy units for the purpose of obtaining credits to offset the District's consumption at other sites.

In connection with its adoption of the Final MND and approval of the Solar Project at the Original Location, the District adopted resolution No. 2015-14, in order to render the City's zoning ordinances inapplicable to the District's Solar Project. In adopting this resolution, the District determined that the Solar Project was absolutely exempt from local zoning ordinances under Government Code section 53091 because it was a facility for "the production or generation of electrical energy." The District also determined, in the alternative, that the Solar Project was exempt from local zoning ordinances under Government Code section 53096 because there was no feasible alternative to the Solar Project as proposed. Resolution No. 2015-14 also included the following language: "SunPower will . . . arrange with the local utility for interconnection of the facilities to generate energy that will be used by the local utility and result in credits to offset use by the District at its operating facilities under the RES[-]BCT Tariff."

C. *The prior litigation and appeal*

In response to the District's December 15, 2015 resolution approving the Project and determining that the Solar Project was exempt from the City's zoning regulations, the City initiated the 2016 lawsuit by filing a petition and complaint seeking a writ of mandate and declaratory and injunctive relief. In the 2016 lawsuit, the City asserted three causes of action. In the first cause of action, the City alleged that the District lacked the authority to construct and operate a solar facility under the California Community Services District Law (CSDL; Gov. Code, § 61000 et seq.) and the

Cortese-Knox-Hertzberg Act (Gov. Code, § 56000 et seq.).[10] In the second cause of action, the City alleged that the District was not exempt from the City's zoning ordinances under either Government Code section 53091 or Government Code section 53096. The third cause of action was for declaratory relief, and rested on the allegations of the first two causes of action.

In October 2016, the trial court ruled in favor of the District with respect to the first cause of action, concluding that the District did have the authority to construct and operate a solar facility. In its ruling, the trial court noted that the City had conceded that " '[e]ntering into an agreement pursuant to the State's RES-BCT Program in order to produce electricity for Edison's grid in exchange for credits for energy used by the District's other facilities may be authorized under CSDL's general powers.' " The court then explained that pursuant to the proposed Solar Project, "the electricity produced by the facility will be connected to the local electrical grid adjacent to the Project site and the electricity produced is expected to be metered into the regional grid and credits obtained to offset energy consumption by individual District facilities," demonstrating that the District's Solar Project development was being completed pursuant to the RES-BCT program. The trial court rejected the idea that the Solar Project was not eligible for the RES-BCT program, commenting that "[t]he City does not offer any argument to demonstrate the Project does not fall within the requirements of the

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10 The City's position was that the District lacked the authority to construct and operate a solar facility on the ground that the District had been authorized to provide only water and wastewater services, while the anticipated services associated with the Solar Project involved the provision of electricity. According to the City, the provision of electricity was beyond the scope of the District's authorization under the relevant state statutes.

State's RES-BCT program as set forth in Public Utilities Code section 2830." On this basis, the court denied the petition for writ of mandate as to the first cause of action.

As to the second cause of action, however, the trial court granted the City's requested relief, issuing the writ of mandate, on the grounds that (1) the exceptions provided for in Government Code sections 53091, subdivision (e) and 53096, subdivision (a) did not apply to the Solar Project as a matter of law, and (2) even if Government Code section 53096, subdivision (a) were applicable to the Solar Project, the administrative record does not contain substantial evidence to support the District's finding that there is no feasible alternative to installing the solar farm at any location other than the Project Site.[11]

The District appealed the judgment with respect to the court's ruling as to the second cause of action—a ruling that effectively required the District to comply with the City's zoning ordinance. (*Hesperia I*, *supra*, 37 Cal.App.5th at p. 746.) The City did not file a cross-appeal regarding the trial court's ruling as to the first cause of action, in which the court determined that the District had the authority to construct and operate a solar facility to produce electricity for SCE under the RES-BCT program. (See *id.* at pp. 745–746.)

This court affirmed the trial court's ruling with respect to the second cause of action in favor of the City, but solely on the ground that the administrative record did not contain substantial evidence to support the District's no-feasible-alternative determination. (*Hesperia I*, *supra*, 37 Cal.App.5th at p. 766.) We reached that conclusion, however, after noting

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11 At the City's request, the trial court ultimately dismissed the third cause of action. (*Hesperia I*, *supra*, 37 Cal.App.5th at p. 745.)

our agreement with the trial court's conclusion that the District did possess the authority to construct and operate the Solar Project. (*Id*. at p. 759.)

D. *The parties' actions during a stay of the appeal*

In 2017, during a nine-month stay of the appeal and before the issuance of this court's opinion in *Hesperia I*, the District applied to the City for a General Plan amendment and a conditional use permit for the Solar Project to be constructed in a location 660 feet to the north of the southern property line of the Hesperia Farms Property (the Updated Location). In August 2017, the District adopted an addendum to the Final MND and approved the Solar Project at the Updated Location.

The City's planning commission recommended that the City Council approve the District's application for the Solar Project to be completed at the Updated Location. Nevertheless, in January 2018, the City Council denied the District's application without making findings. After the District notified the City of its failure to adopt findings to support the denial of the District's application, the City Council adopted findings and reissued the denial.

E. *The District's actions post*-Hesperia I

After this court issued its opinion in *Hesperia I*, the District retained the services of Tidewater Incorporated (Tidewater) for the purpose of preparing a technical memorandum that would evaluate the feasibility of installing a commercial solar energy system at other District-owned or District-permitted properties. Tidewater initially considered 61 potential locations for installation of an alternative energy system, all of which were parcels owned or leased by the District. Tidewater narrowed that initial list to six possible alternative sites, which it analyzed in detail according to a variety of economic, environmental, social, and technical criteria.

The District also retained the services of Sage Energy Consulting, Inc. (Sage), to conduct an evaluation of the economic feasibility of placing solar or wind installations at the six potential project sites that were identified and considered in the Tidewater technical memorandum. Sage reviewed the financial projections from the original SunPower proposal and whether changes in the RES-BCT tariff since the contract with SunPower was entered had changed the economic feasibility of the project. Sage concluded that the RES-BCT program was the "only feasible alternative for generating bill credits" after conducting a review of other net metering and direct offset alternatives to that program. Sage also determined that the District's annual savings from energy generation arising from the RES-BCT program being utilized on the Hesperia Farms Property would be $160,700 (which would represent 29 percent of the District's annual electricity costs), while energy savings from the alternative sites would range from zero to $37,000, annually.

Staff at the District prepared a May 2020 report titled "Lake Arrowhead Community Services District—Alternatives to Proposed Solar Photovoltaic System on Hesperia Farms Property" (the Alternatives Report). The Alternatives Report documented the District's investigation into the possible alternatives to locating and operating the Solar Project at the Updated Location on the Hesperia Farms Property. In the Alternatives Report, District staff identified the proposed project's objectives as including implementing a renewable energy project that would be large enough to permit efficiencies of scale and provide for adequate bill credits to offset the District's energy costs. Staff considered and rejected "other forms of renewable energy as alternatives" to the Solar Project, including solar thermal, hydroelectric, wind, geothermal, and digester gas alternatives,

concluding instead that a solar photovoltaic project would be the most cost-effective and productive. Staff also identified the RES-BCT program as the only viable option that would allow the District to generate sufficient bill credits to make an alternative energy project worthwhile, based on the Sage report's review of other alternative programs such as net metering (i.e., the generation of energy to offset the use of energy at a single location).

In the Alternatives Report, District staff also considered the use of alternative sites already owned or controlled by the District, as well as other sites that the District could acquire for use. For purposes of the Alternatives Report, District staff considered only other sites for potential acquisition that were within the District's service areas—i.e., the areas to which the District provides water and/or wastewater services to the public.

District staff concluded, based on the Tidewater and Sage reports, that the District would save approximately $3.67 million and that approximately 29 percent of the District's energy costs would be offset by the Solar Project as proposed at the Updated Location over a 30-year period.

At a regularly held public meeting on June 23, 2020, the District adopted Resolution No. 2020-04, in which it determined that there was no feasible alternative to the Solar Project at the Updated Location on the District's Hesperia Farms Property. This finding rendered the City's zoning regulations inapplicable to the Solar Project at the Hesperia Farms Property, pursuant to Government Code section 53096. The District filed a notice of determination under CEQA on July 2, 2020.

F. *The current action*

Despite the District's proposed change to the location of the Solar Project on the Hesperia Farms Property to partially comply with the City's zoning regulations, the City remained opposed to any development of a solar

farm at that location. In September 2020, the City filed a petition for writ of mandate and complaint, thereby initiating the litigation in this matter. The City asserts four causes of action. In the first cause of action, the City challenges the District's "use of the RES-BCT program," arguing that the District is without authority to utilize the RES-BCT program because, according to the City, the Hesperia Farms Property is not within the "geographical boundaries" of the District, as required by section 2830. In the second cause of action, the City asserts that the District's approval of the Addendum violated CEQA. In the third cause of action, the City challenges the sufficiency of the evidence to support the District's determination that there are no feasible alternatives to the Solar Project for purposes of the zoning regulations exemption under Government Code section 53096. And, in the fourth cause of action, the City seeks declaratory relief based on its first and third causes of action.

On July 12, 2021, the trial court issued a tentative ruling in which it proposed granting the City's petition for writ of mandate on the ground that the Hesperia Farms Property is not located within the District's "geographical boundary" as required by section 2830, and that therefore the District was not entitled to rely on the RES-BCT program to conclude that the Hesperia Farms Property is the only feasible alternative and thereby avoid application of the City's zoning regulations through the qualified exemption under Government Code section 53096. The trial court's tentative ruling rejected the City's other grounds for challenging the propriety of the District's no-feasible-alternative finding and the District's CEQA determinations. However, after hearing from the parties, the trial court permitted the parties to submit additional briefing on several of the District's affirmative defenses, including res judicata, collateral estoppel, statutes of

limitation, laches, and standing, and the court also permitted the parties to further brief the merits of the City's causes of action.

After receiving supplemental briefing and conducting a second hearing, the trial court revised its ruling. Instead of granting the City's petition for a writ of mandate, the trial court issued a ruling denying in full the City's petition for a writ of mandate. The trial court concluded that the City is "barred by the doctrine of laches from relying on an argument that the [Hesperia Farms Property] does not qualify for the RES-BCT program." The trial court affirmed the other determinations it had made in the tentative ruling. Given its application of laches and the other determinations, the trial court concluded that the City was unable to prevail with respect to any of its causes of action. The trial court entered a judgment in favor of the District on March 8, 2022.

The City filed a timely notice of appeal from the judgment.

III.

DISCUSSION

In this appeal, the City pursues only limited theories of error on the part of the trial court. Specifically, the City asserts that the trial court erred in concluding that laches bars it from challenging the eligibility of the Solar Project on the Hesperia Farms Property for the RES-BCT program. The City further contends that the Solar Project, as proposed on the Hesperia Farms Property, is not eligible for the RES-BCT program because the Hesperia Farms Property is not within the District's "geographical boundary" as required under section 2830.

The District encourages this court to affirm the trial court's denial of the City's petition for writ of mandate on any of multiple alternative grounds. The District contends that the trial court's laches ruling is supported by

substantial evidence and should be affirmed. The District further contends, however, that this court may also affirm the trial court's judgment in its favor with respect to the first and third causes of action because (a) the City lacks standing to challenge the District's eligibility for use of the RES-BCT program for the Solar Project as located on the Hesperia Farms Property; (b) the City failed to exhaust administrative remedies before filing this action; (c) the City's challenge to the Solar Project's eligibility for the RES-BCT program is untimely under the relevant statute(s) of limitation; (d) the City's challenge to the Solar Project's approval and reliance on the RES-BCT project is barred by the doctrine of collateral estoppel; and (e) the Solar Project is eligible for the RES-BCT program because the Hesperia Farms Property *is* within the District's geographical boundary.

The District also points out that the City failed to challenge the trial court's ruling denying the petition as to the second cause of action (the alleged CEQA violation), as well as the court's ruling as to the sufficiency of the evidence to support the District's no-feasible-alternative determination as challenged in the third cause of action.

The City concedes that it has not raised any appellate issue with respect to the second cause of action. However, the City contends that it *is* asserting that the District's no-feasible-alternative determination, which the City is challenging in the third cause of action, is not supported by sufficient evidence because the District improperly relied on the Hesperia Farms Property as being eligible for the RES-BCT program while excluding other potential locations as not being eligible for the program. Because the City's appeal touches solely on the first and third causes of action, and because the fourth cause of action rises or falls on the merits of the first and third causes

of action, we address the trial court's rulings with respect to the first and third causes of action only.

A. *The parties' requests for judicial notice*

As an initial matter, we address two requests for judicial notice filed by the parties that remain pending as we consider the merits of the City's appeal.

On July 11, 2022, the District filed a request for judicial notice, asking this court to take judicial notice of five sets of documents that it identifies as follows:

> "Exhibit A: California Bill Analysis, Senate Floor, 2007-2008 Regular Session, Assembly Bill 2466, August 12, 2008";
>
> "Exhibit B: California Bill Analysis, Senate Committee, 2015-2016 Regular Session, Assembly Bill 1773, Hearing Date June 21, 2016";
>
> "Exhibit C: Public Utilities Commission Resolution E-4283, Tariffs compliant with Public Utilities (PU) Code Section 2830 relating to Establishment of a Schedule for Local Government Renewable Energy Self-Generation Program, dated April 22, 2010";
>
> "Exhibit D: Letter from Public Utilities Commission to Southern California Edison re Supplemental Compliance Advice Filing Pursuant to Resolution E-4283 Regarding Establishment of Schedule RES-BCT Local Government Renewable Energy Self-Generation Bill Credit Transfer, dated July 12, 2010, and attached Advice Letter 2351-E-A, dated May 3, 2010"; and
>
> "Exhibit E: Public Utilities Commission Rule 21 Generating Facility Interconnections, effective April 8, 2021."

The first and second sets of documents contain some legislative history related to the original enactment of section 2830 and a later amendment to

the statute; the District contends that this legislative history is relevant to interpreting the phrase "geographical boundaries" as used in section 2830. The District states that the third, fourth, and fifth sets of documents are relevant to its argument that the City failed to exhaust administrative remedies before the Public Utilities Commission.

The City has opposed the District's request for judicial notice as to the first, third, fourth, and fifth sets of documents. The City notes that the second set of documents in the District's request for judicial notice is already part of the record on appeal and, as a result, there is no need for this court to take judicial notice of this set of documents. The City argues that the other four sets of documents, however, were not presented to the trial court, and that therefore this court should not consider the documents in the first instance in the absence of exceptional circumstances. The City also argues that the remaining four sets of documents are not relevant to the matters before this court, arguing that the "offered material does not support the arguments which Respondents have based on it."

After reviewing the documents that are the subject of the District's July 11, 2022 request for judicial notice, we decline to take judicial notice of the third, fourth, and fifth set of documents on the ground that these documents are not relevant to an issue that is necessary to our disposition. (See *Guarantee Forklift, Inc. v. Capacity of Texas, Inc.* (2017) 11 Cal.App.5th 1066, 1075 (*Guarantee Forklift*) [an appellate court "may decline to take judicial notice of matters not relevant to dispositive issues on appeal"].) As we explain further in part III.B. *post*, we conclude that the trial court's judgment with respect to the first cause of action should be affirmed on the grounds on which the trial court ruled, as well as on the alternative ground that, on the merits, the City has failed to demonstrate that the Solar Project,

as proposed on the Hesperia Farms Property, is ineligible for the RES-BCT program as a result of the location not being within the "geographic boundaries" of the District. As a result, we have no need to consider the District's alternative argument for affirmance that the City failed to exhaust administrative remedies.

We also decline to take judicial notice of the first set of documents, titled by the District as "California Bill Analysis, Senate Floor, 2007-2008 Regular Session, Assembly Bill 2466, August 12, 2008," albeit not because we view the documents as irrelevant. Rather, it is clear that these legislative history materials have been published, and, as such, there is no need for this court to take judicial notice of these materials: "A motion for judicial notice of published legislative history, such as the Senate analysis here, is unnecessary. [Citation.] 'Citation to the material is sufficient. [Citation.] We therefore consider the request for judicial notice as a citation to those materials that are published.' [Citation.]" (*Wittenberg v. Beachwalk Homeowners Assn.* (2013) 217 Cal.App.4th 654, 665, fn. 4, quoting *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 45–46, fn. 9.)

Although we decline to take judicial notice of the first set of documents, we nevertheless consider them, as they are the type of material that may be considered as an indication of the Legislature's intent in enacting a particular statute. (See *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 37 [identifying list of documents that have been held to constitute cognizable legislative history as including bill histories, legislative committee reports and analyses, bill digests, Office of Assembly Floor Analyses, and Office of Senate Floor Analyses].) As we discuss further in part II.B.2., *post*, we consider various aspects of the legislative history of section 2830, insofar as it is helpful to our

understanding of the Legislature's intentions in creating the RES-BCT program.

On August 11, 2022, the City filed a request for judicial notice, seeking to have this court judicially notice five documents that had been included in the record in *Hesperia I*. The City identifies the documents that are the subject of its motion for judicial notice as follows:

> "Exhibit 1: [The District's] Answer to Petition for Writ of Mandate; Complaint for Declaratory and Injunctive Relief";
>
> "Exhibit 2: Real Party in Interest SunPower Corporation, Systems' Verified Answer to Petitioner City of Hesperia's Petition for Writ of Mandate; Complaint for Declaratory and Injunctive Relief";
>
> "Exhibit 3: Petitioners' Opening Brief in Support of Petition for Writ of Mandate";
>
> "Exhibit 4: Respondents' Opposition to Petition for Writ of Mandate"; and
>
> "Exhibit 5: Petitioner's Reply Brief in Support of Petition for Writ of Mandate."

The City contends that these documents are relevant to whether it may be collaterally estopped from litigating the eligibility of the Solar Project on the Hesperia Farms Property for the RES-BCT program.

Although the District has not opposed the City's request for judicial notice, we nevertheless decline to take judicial notice of these documents because we have no need to consider whether the City should be collaterally estopped from litigating the eligibility issue, given our conclusion that the trial court's judgment as to the first cause of action should be affirmed on other grounds. (See *Guarantee Forklift*, *supra*, 11 Cal.App.5th at p. 1075.)

B *The trial court did not err in declining to grant a writ of mandate as to the City's first cause of action, which is based on the City's challenge that the Hesperia Farms Property "is not located within the geographical boundaries of the District"*

In its first cause of action, which the City titles "Petition for Writ of Mandate - Code of Civil Procedure § 1085," the City "challenges the District's use of the RES-BCT program for its Solar Project because it is not located within the 'geographical boundary of the local government' for purposes of the requirements of Public Utilities Code section 2830." In connection with this cause of action, the City sought issuance of "a temporary restraining order and preliminary injunction restraining Respondents and Real Parties in Interest from taking action to carry out the Project pending trial" and/or "a peremptory writ of mandate directing Respondents shall not proceed with the Solar Farm Project."

1. *The trial court's application of laches to bar the City's assertion that the Solar Project is ineligible for the RES-BCT program is supported by the record and does not constitute an abuse of discretion*

Although the trial court declined to rule in favor of the City on the first cause of action, it did so because it determined that the District had succeeded in demonstrating that the affirmative defense of laches applied to bar the City's claim that the Solar Project, as planned on the Hesperia Farms Property, was not eligible for the RES-BCT program. Because the trial court found that laches was a determinative issue, we begin our consideration of the correctness of the trial court's judgment by reviewing its determination that the District's affirmative defense of laches operates to bar the City from

pursuing a challenge to the Solar Project's eligibility for the RES-BCT program.[12]

"Laches is an equitable, affirmative defense which requires a showing of both an unreasonable delay by the plaintiff in bringing suit, ' "plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay." ' " (*Highland Springs Conference & Training Center v. City of Banning* (2016) 244 Cal.App.4th 267, 282.) As described by the United States Supreme Court, "laches is a defense developed by courts of equity." (*Petrella v. MGM* (2014) 572 U.S. 663, 678.) Thus, "[t]he doctrine of laches applies in equitable actions alone" (*Blue Cross of Northern California v. Cory* (1981) 120 Cal.App.3d 723, 743–744), and it may be asserted as a defense in "an equitable action seeking a writ of mandamus" (*Julian Volunteer Fire Co. Assn. v. Julian-Cuyamaca Fire Protection Dist.* (2021) 62 Cal.App.5th 583, 601; see *Conti v. Board of Civil Service Comm'rs* (1969) 1 Cal.3d 351, 357, fn. 3 [recognizing authority demonstrating that the defense of laches may be invoked in an administrative mandamus proceeding]).

To establish a successful affirmative defense based on laches, a defendant must show that the plaintiff unreasonably delayed in filing suit, together with either the plaintiff's acquiescence in the conduct about which it complains *or* prejudice to the defendant because of the delay. (*Miller v. Eisenhower Medical Center* (1980) 27 Cal.3d 614, 624 (*Miller*); see *Highland Springs Conference & Training Center v. City of Banning* (2016) 244 Cal.App.4th 267, 282 ["Laches is an equitable, affirmative defense which

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12 Although the laches ruling was fundamental to the trial court's decision to deny the City's writ petition, the City only begins to address the issue of laches on page 53 of its opening brief, and devotes a total of approximately five pages to the issue.

requires a showing of both an unreasonable delay by the plaintiff in bringing suit, ' "plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay." ' "].) "The basic elements of laches are: (1) an omission to assert a right; (2) a delay in the assertion of the right for some appreciable period; and (3) circumstances which would cause prejudice to an adverse party if assertion of the right is permitted." (*Stafford v. Ballinger* (1962) 199 Cal.App.2d 289, 296.)

"[T]he defense of laches may operate as a bar to a claim by a public administrative agency . . . if the requirements of unreasonable delay and resulting prejudice are met." (*Robert F. Kennedy Medical Ctr. v. Belshe* (1996) 13 Cal.4th 748, 760, fn. 9 (*Robert F. Kennedy Medical Ctr.*); accord, *Krolikowski v. San Diego City Employees' Retirement System* (2018) 24 Cal.App.5th 537, 568 (*Krolikowski*); *Cedars-Sinai Medical Center v. Shewry* (2006) 137 Cal.App.4th 964, 985–986 (*Cedars-Sinai Medical Center*).)

Although the showing necessary to assert a successful laches defense is clear, the standard of review applicable to a trial court's determination regarding the defense of laches is not. Often authorities identify the standard of review applicable to a trial court's allowance of laches as one of review for substantial evidence. (See, e.g., *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 67; *Lent v. California Coastal Com.* (2021) 62 Cal.App.5th 812, 837; *Marshall v. Marshall* (1965) 232 Cal.App.2d 232, 252; *Teixeira v. Verissimo* (1966) 239 Cal.App.2d 147, 158.) However, other authorities have stated that a trial court's laches determination is reviewed for an abuse of the trial court's discretion. (See, e.g., *Straley v. Gamble* (2013) 217 Cal.App.4th 533, 537; *Luxury Asset Lending, LLC v. Philadelphia Television Network, Inc.* (2020) 56 Cal.App.5th 894, 913 [noting that application of laches defense "is entrusted to the discretion of the trial court

and such discretion usually goes undisturbed by the appellate tribunal"]; *Piscioneri v. City of Ontario* (2002) 95 Cal.App.4th 1037, 1046 [in the absence of " 'palpable abuses of discretion,' " a trial court's " 'finding of laches will not be disturbed on appeal' "].)

Elsewhere, the standard of review applicable to a trial court's decision to apply or reject a laches defense has been stated as follows: "Generally speaking, the existence of laches is a question of fact to be determined by the trial court in light of all of the applicable circumstances, and in the absence of manifest injustice or a lack of substantial support in the evidence its determination will be sustained. [Citations.]" (*Miller*, *supra*, 27 Cal.3d at p. 624.) In other words, an appellate court is to review trial court laches determinations for "manifest injustice" *or* for "lack of substantial . . . evidence" (*ibid.*), which appears to reflect application of a mixed standard of review—i.e., review for abuse of discretion and substantial evidence. Under this standard, an appellate court defers to the trial court's weighing of the equities of the delay and prejudice and affirms so long as the application or

denial of laches does not result in manifest injustice, but considers whether the trial court's factual findings are supported by substantial evidence.[13]

We conclude that a dual/mixed standard of review seems most appropriate when assessing a trial court's determination that laches operates to prevent a plaintiff from being entitled to relief on a belatedly-raised claim, given that a trial court must determine not only what the underlying facts are, but also whether such facts weigh in favor of applying the affirmative defense of laches to bar the plaintiff's claim.[14]

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[13] To make things even more complex, another standard of review has been identified as applicable in situations in which a trial court *declines* to apply laches to bar a plaintiff's claim. This standard of review stems from the fact that laches is an affirmative defense as to which the defendant has the burden of proof: " 'In the case where the trier of fact has expressly or implicitly concluded that the party with the burden of proof did not carry the burden and that party appeals, it is misleading to characterize the failure-of-proof issue as whether substantial evidence supports the judgment. . . .' " (*Dreyer's Grand Ice Cream, Inc. v. County of Kern* (2013) 218 Cal.App.4th 828, 838.) Instead, " 'the question for a reviewing court [where a trial court has concluded a defendant has not carried its burden with respect to an affirmative equitable defense] becomes whether the evidence compels a finding in favor of the appellant as a matter of law' " because " 'the appellant's evidence was (1) "uncontradicted and unimpeached" and (2) "of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding." ' " (*Ibid.*; see *Eisen v. Tavangarian* (2019) 36 Cal.App.5th 626, 647 [applying similar standard to appeal from trial court's denial of the defenses of waiver and estoppel]; *Atkins v. City of Los Angeles* (2017) 8 Cal.App.5th 696, 734 [applying similar standard to an employer's defense of undue hardship in an action under the Fair Employment and Housing Act].)

[14] As a practical matter, it appears obvious that if there is no substantial evidence to support the trial court's findings, or if the application of the facts does not warrant the court's ultimate conclusion or if manifest injustice would result from application of the doctrine, the trial court's ruling would necessarily constitute an abuse of the court's discretion.

In its opening brief, the City's sole argument as to why the trial court erred in concluding that laches barred its claim that the Solar Project is not eligible for the RES-BCT program is that "[l]aches is not applicable in this case" because, the City asserts, "laches may not be raised against a governmental agency, 'where there is no showing of manifest injustice to the party asserting laches, and where application of the doctrine would nullify a policy adopted for the public protection.' " The City cites *Morrison v. Cal. Horse Racing Bd.* (1988) 205 Cal.App.3d 211, 219 (*Morrison*), for this proposition.

Even assuming the statement of the law in *Morrison* is a correct statement of the law (but see *Lent v. California Coastal Com.* (2021) 62 Cal.App.5th 812, 837 [" 'Under appropriate circumstances, the defense of laches may operate as a bar to a claim by a public administrative agency . . . if the [typical] requirements of unreasonable delay and resulting prejudice are met' "]), the City's assertion fails to acknowledge that in this case, there are two *competing* public policies adopted for the public's benefit that are at stake—not just one. While it seems clear that a municipality's zoning regulations are typically adopted for the public's benefit, it is equally apparent that public benefit is the impetus for the state's policy of encouraging local government energy users to generate energy through renewable sources to meet their energy usage needs. Renewable energy sourcing not only serves the public's interest through the indirect environmental benefits, but it also provides a direct benefit to the public by ensuring adequate energy supplies exist for the state. (See, e.g., Pub. Res. Code, § 25001 ["The Legislature hereby finds and declares that electrical energy is essential to the health, safety and welfare of the people of this state and to the state economy, and that it is the responsibility of state government

to ensure that a reliable supply of electrical energy is maintained at a level consistent with the need for such energy for protection of public health and safety, for promotion of the general welfare, and for environmental quality protection."]; California Public Utilities Commission, Energy Storage Phase 2 Interim Staff Report—January 4, 2013, p. 17 ["The Energy Action Plan of 2005 (EAP) is a joint agency document intended to guide the procurement decisions of the State of California. The term 'preferred resource' is a term of art that emanated from the EAP, which stated a policy that California should meet future electric resource needs in the following 'Loading Order: Energy efficiency · Renewable resources · Clean fossil fuels."].) In fact, the public policy favoring the assurance of adequate and necessary energy supplies to the citizens of the state underlies Government Code section 53096's qualified zoning exemption for facilities that involve the "transmission" of electrical energy where there is no feasible alternative to the local agency's proposal—i.e., the statutory authority pursuant to which the District made its determination that the Solar Project was exempt from the City's zoning regulations.

It is thus clear that this matter is wholly unlike *Morrison*, *supra*, 205 Cal.App.3d at page 219, and *Mary R. v. B. & R. Corp*. (1983) 149 Cal.App.3d 308, 315–316, the authority on which *Morrison* relies. In neither of these cases was there a public policy supporting the party asserting laches; the only public policy that was at issue was that of the party attempting to avoid the application of laches. Given the nature of this action as involving competing public policies, as well as authority demonstrating that laches *may* be applied to bar a claim made by a public agency (see, e.g., *Robert F. Kennedy Medical Ctr.*, *supra*, 13 Cal.4th at p. 760, fn. 9; accord, *Krolikowski*, *supra*, 24 Cal.App.5th at p. 568; *Cedars-Sinai Medical Center*, *supra*, 137 Cal.App.4th

at pp. 985–986), we reject the City's contention that laches was not an available legal doctrine on which the trial court could rely to bar the City's belated RES-BCT program eligibility argument. We therefore consider the trial court's application of laches in this case.

In ruling that laches applies to bar the City from raising its contention that any solar project undertaken by the District on the Hesperia Farms Property is not eligible for the RES-BCT program, the trial court made detailed findings and concluded that "the City has unreasonably delayed raising the issue that the Hesperia Farms site does not qualify for the RES-BCT program to the prejudice of the District." To support this determination, the court found that the City "was aware of the District's intent to proceed under the RES-BCT program . . . since at least November 18, 2014, when District staff met with the City Manager and the Planning Department to discuss the solar facility." The court further indicated that, at a minimum, the City had to have been aware of the District's planned use of the RES-BCT program in 2015, once the District publicly entered into the Interconnection Agreement with SCE under the RES-BCT program. The trial court expressed concern that the City failed to raise the issue of the Solar Project's eligibility for the RES-BCT program during the 2016 lawsuit. As the trial court noted, the City "was aware of the issue and could have raised it [in the trial court in the 2016 lawsuit] as evidenced by its argument submitted on appeal [in the prior litigation]," but the City "offer[ed] no explanation for [its] delay in raising the eligibility issue that could have been raised and addressed" in that litigation.

The record supports the trial court's conclusions in this regard, as the City's approach to this issue throughout the *five-year delay* during which the City failed to bring a claim challenging the Solar Project's RES-BCT

eligibility, and particularly in the context of the 2016 lawsuit, demonstrates that the delay was unreasonable and the City's conduct operated to induce the District into believing that the question of the eligibility of the Solar Project for the RES-BCT program was not being challenged. Not only did the City never raise a question as to the Hesperia Farms Property's eligibility for the RES-BCT program during its discussions with the District prior to the District's initial approval of the Solar Project, but, notably, the City's 2016 petition for a writ of mandate did not challenge or even question the Solar Project's eligibility for the RES-BCT program based on its proposed location on the Hesperia Farms Property.

In its reply brief, the City argues that the record does not demonstrate that it knew about the District's plan to use the RES-BCT program for the Solar Project in 2014 or 2015. However, the record need only demonstrate that the City was on inquiry notice regarding the issue: "In order to impute laches to one who seeks relief in equity, it should clearly appear that he either had actual knowledge of the facts *or failed to acquire such knowledge after having notice thereof*. [Citation.]" (*McNulty v. Lloyd* (1957) 149 Cal.App.2d 7, 10–11, italics added.) Further, the record supports the reasonable inference that the City *was* aware of the plan by the District to utilize a program available to governmental entities that would allow it to generate electrical energy at the Hesperia Farms Property, transport that energy to the grid, and be credited for that energy against the cost of its energy consumption at other facilities—i.e., the RES-BCT program. For example, the City argues that the administrative record does not support the trial court's finding with respect to the City's awareness of the District's intent to use the RES-BCT program as of November 18, 2014, because the record citation on which the trial court relied states only that on that date

" 'District staff met with the City Manager and members of the Planning Department at the City of Hesperia to discuss *the permitting process* for a solar facility on the Hesperia Farms Property.' " According to the City, this statement does not indicate that District staff mentioned the "Interconnection Agreement, the RES-BCT program, or Section 2830." However, a fair reading of the record supports the reasonable inference that the discussions between City staff and District staff involved the details of the proposed project, including its size, location, and the reason for the project—i.e., the plan by the District to utilize a solar farm at the Hesperia Farms Property to offset the cost of the District's energy use elsewhere, which would only be possible through the state's RES-BCT program.

The City also argues that the District's August 2015 approval of the Interconnection Agreement is insufficient to demonstrate that the City had knowledge about the Interconnection Agreement or the planned use of the RES-BCT program. However, the District approved the Interconnection Agreement with SCE at a publicly-noticed and open meeting, and the Interconnection Agreement itself references the fact that the District would be "export[ing] electrical energy to the grid pursuant to the . . . RES-BCT [program]." The law places on every person a duty to inquire as to facts which that person could learn with reasonable diligence: "Every person who has actual notice of circumstances sufficient to put a prudent [person] upon inquiry as to a particular fact, has constructive notice of the fact itself in all cases in which, by prosecuting such inquiry, he [or she] might have learned that fact." (Civ. Code, § 19.) Because of the District's public notice of the meeting and the proposed actions to be taken at the meeting, the City was on notice of facts from which it should have been aware of the District's entering into Interconnection Agreement.

Beyond this, the record demonstrates, even without the need for reasonable inferences, that the City was *actually* aware of the fact that the District planned to rely on the RES-BCT program no later than December 2015. A December 14, 2015 letter from a "Principal Planner" at the City to the District expressly demonstrates that the City was well aware of the District's planned use of the RES-BCT program: "The energy . . . generated by the solar farm is not being used for the District's facilities. Its purpose *is to transmit energy into the grid in order to gain credits for districtwide operations*." Moreover, the City's own petition initiating the 2016 lawsuit makes it clear that the City was aware of the District's plan to utilize the RES-BCT program. Among the allegations in the petition is the City's assertion that in August 2015, the District "entered into a Generator Interconnection Agreement for the project with Edison." Given that the Interconnection Agreement itself described its purpose as the exportation of electricity to the grid pursuant to the RES-BCT program, the City cannot reasonably argue that it was not aware of the District's plan to rely on the RES-BCT program in the construction and operation of the Solar Project at least by the time it filed its 2016 lawsuit, and the record supports the conclusion that the City was aware of the planned use of the RES-BCT program for the Solar Project much earlier than the initiation of the 2016 lawsuit.

Nevertheless, the City did not raise any issue regarding the eligibility of the Solar Project on the Hesperia Farms Property for the RES-BCT program in its 2016 lawsuit. Despite the fact that the City opted not to include a cause of action challenging the Solar Project's eligibility for the RES-BCT program in the 2016 lawsuit, it is clear that the trial court in that action understood that the issue of the Solar Project's eligibility for the RES-

BCT program was fundamental to the question that the City had raised in its petition for a writ of mandate in that action—i.e., whether the District was authorized to develop and operate the Solar Project. The trial court's ruling in the 2016 lawsuit *specifically addressed the District's authority to build and operate the Solar Project on the Hesperia Farms Property pursuant to the RES-BCT program*. The trial court found that the City had conceded that " '[e]ntering into an agreement pursuant to the State's RES-BCT Program in order to produce electricity for Edison's grid in exchange for credits for energy used by the District's other facilities may be authorized under CSDL's general powers,' " and further found that the proposed Solar Project would utilize the RES-BCT program by having the "electricity produced by the facility . . . connected to the local electrical grid adjacent to the Project site and the electricity produced . . . metered into the regional grid and credits obtained to offset energy consumption by individual District facilities." The trial court also rejected the idea that the Solar Project was *not* eligible for the RES-BCT program, stating that "[t]he City does not offer any argument to demonstrate the Project does not fall within the requirements of the State's RES-BCT program as set forth in Public Utilities Code section 2830." This ruling formed the basis of the trial court's denial of the City's petition for writ of mandate as to the first cause of action. Yet, despite this determination by the trial court in the 2016 lawsuit, the City did *not cross-appeal from the trial court's judgment* to challenge the trial court's ruling that the District was authorized to build and operate the Solar Project pursuant to the RES-BCT program. In taking this approach, the City effectively communicated that it

had accepted the trial court's ruling in this regard, and was conceding its correctness.[15]

Moreover, even *after* the issuance of the opinion in *Hesperia I*, the City never again raised the question of the Solar Project's eligibility for the RES-BCT program until it filed suit again. Thus, while the District continued to move forward with its new alternatives analysis, the City gave no indication to the District that it would be raising a challenge to the Solar Project's RES-BCT eligibility years after the District had entered into the Interconnection Agreement.

Not only does the record support the trial court's determinations regarding the City's undue delay in bringing a claim challenging the Solar Project's eligibility for the RES-BCT program, but the record also supports the trial court's finding that the City's delay prejudiced the District. For purposes of laches, " ' " '[a] defendant has been prejudiced by a delay when the . . . defendant has changed his position in a way that would not have occurred if the plaintiff had not delayed.' " ' " (*George v. Shams-Shirazi*

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15 The District also argues that the City is barred from raising the question of the Solar Project's eligibility for the RES-BCT program on issue preclusion grounds. "*Issue preclusion* prohibits the relitigation of issues argued and decided in a previous case, even if the second suit raises different causes of action. [Citation.] Under issue preclusion, the prior judgment conclusively resolves an issue actually litigated and determined in the first action." (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824.) Issue preclusion applies if there was (1) a final adjudication (2) of an identical issue (3) that was actually litigated, (4) necessarily decided, and (5) asserted against one who was a party in the first suit or one in privity with that party. (*Id*. at p. 825.) We need not consider whether all of the requisite elements are met in this case because the trial court relied on laches to deny the City relief, and we conclude that the trial court's laches ruling is supported by the record and does not constitute an abuse of discretion.

(2020) 45 Cal.App.5th 134, 142; see *Magic Kitchen LLC v. Good Things Internat., Ltd.* (2007) 153 Cal.App.4th 1144, 1161.)

The trial court reasonably concluded that after the 2016 lawsuit and appeal, the District continued to treat the "Hesperia Farms site as [a] feasible [location for the Solar Project], with the only [remaining issue it had to address] being whether substantial evidence supported a finding that there was 'no feasible alternative' to that location." The record supports the trial court's determination that the District expended additional money, time and effort pursuing the alternatives analysis. For example, the record demonstrates that the District retained and paid for the assistance of two outside companies to undertake technical analyses and develop reports after the District was told by this court in *Hesperia I* that it would be properly exempt from the City's zoning regulations only once it successfully demonstrated there was no feasible alternative to the Solar Project. The District pursued the alternatives analysis and continued to move forward in developing the Solar Project because there was no reason for it to believe that there remained a real question as to the eligibility of the Solar Project as planned on the Hesperia Farms Property for the RES-BCT program; rather, it appeared that the only remaining issue was whether there was a feasible alternative to the Hesperia Farms Property site for an alternative energy project. Further, the City's multi-year delay in raising any challenge to the Solar Project's eligibility for the RES-BCT program has placed the District's ability to obtain the RES-BCT tariff credits at risk. The RES-BCT program has a statewide program limit of 250 megawatts, and the state's utilities are required to offer service under the RES-BCT program tariff only until each

utility reaches its proportionate megawatt share of the program.[16] SCE's proportionate share of the statewide 250 megawatt limit is 123.8 megawatts; once SCE reaches the 123.8 megawatt limit, SCE will no longer have to honor the RES-BCT tariff credit for governmental agencies seeking to pursue alternative off-site energy generation.

Nevertheless, the City argues that the District was not prejudiced by its delay in asserting the ineligibility of the Solar Project for the RES-BCT program because, according to the City, the District would have needed to go through the City's zoning process or conduct an alternatives analysis, regardless whether the City raised the RES-BCT eligibility issue earlier or not. However, if the District had known that the City would bring up an issue that it could have raised in the prior litigation and that the District's entire plan for the Solar Project was at risk from a determination that the Hesperia Farms Property was not eligible for the District's use of the RES-BCT program, it might have decided to seek a ruling as to that issue first, *before* undertaking the costly and time-consuming alternatives analysis. Alternatively, it might have made very different decisions about whether to

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16 Subdivision (h) of section 2830 provides for the limitation in how much total wattage is available for the RES-BCT program statewide: "An electrical corporation is not obligated to provide a bill credit to a benefiting account that is not designated by a local government prior to the point in time that the combined statewide cumulative rated generating capacity of all eligible renewable generating facilities within the service territories of the state's three largest electrical corporations reaches 250 megawatts. Only those eligible renewable generating facilities that are providing bill credits to benefiting accounts pursuant to this section shall count toward reaching this 250-megawatt limitation. *Each electrical corporation shall only be required to offer service or contracts under this section until that electrical corporation reaches its proportionate share of the 250-megawatt limitation based on the ratio of its peak demand to the total statewide peak demand of all electrical corporations*." (Italics added.)

pursue the Solar Project at all, and it could have abandoned undertaking any alternatives analysis with respect to the Solar Project if the analysis would have been futile in a scenario where the Solar Project itself was determined ineligible for the RES-BCT program.

The City also argues that the " 'mere expenditure of money or effort on the part of a defendant is insufficient to show prejudice.' " However, the authority quoted by the City makes clear that the "mere expenditure of money or effort on the part of a defendant is insufficient to show prejudice" only in a particular situation—i.e., where the "expenditures" at issue "*were not induced by the alleged delay* in bringing this action." (*Austin v. Hallmark Oil Co.* (1943) 21 Cal.2d 718, 735, italics added.) Here, the record demonstrates that the District was relying on the RES-BCT program from the very beginning of its interest in developing an alternative energy project at the Hesperia Farms location; if the District had been aware that the City was objecting to the Solar Project's eligibility for the program from the start, the District may have declined to spend years of time and expense in

pursuing the Solar Project and could have focused its efforts for energy cost reductions elsewhere.[17]

In its reply brief in this case, the City also attempts to suggest that its raising of the RES-BCT program eligibility issue (for the first time) in its opposition brief on appeal in the 2016 lawsuit somehow placed the District "on notice before it even adopted the resolution that is the subject of this case that the City was finally aware of the location issue and would raise it." However, as we have indicated, the manner in which City approached this issue was likely to have induced the District into believing that the City had acquiesced on the RES-BCT program eligibility question—not that the City would press the issue again at a later point in time. If the City believed that the question of RES-BCT program eligibility remained at issue, it could have filed a cross-appeal from the trial court's ruling in the 2016 litigation that the

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17 One of the fundamental benefits the District is seeking as a result of the construction and maintenance of a solar energy farm on the Hesperia Farms Property derives from the credits the District would be able to obtain and apply to offset the cost of its energy consumption at other facilities through the state's RES-BCT program, which is unique in this regard. (See Sen. Energy, Utilities and Com. Committee, Analysis of Assembly Bill No. 2466 (2007-2008 Reg. Sess.), as amended June 12, 2008 ["[T]here is a common theme with [programs to encourage customers to meet their own electrical generation needs]—each generally involves a customer installing small scale renewable power on the customer's side of the meter to offset their load and in some instances generate excess power. . . . [¶] . . . [¶] The . . . intent [of Assembly Bill No. 2466] is to allow local government entities to credit energy produced from renewable resources owned by the local entity against their electrical usage on more than just the facility where the renewable generator is located. The author believes that current law does not allow a local government entity to maximize renewable electricity potential at some locations because current program that would allow the local government to sell its excess power back to the utility under a FIT is not as economically beneficial to the local government as using the renewable electricity to offset the government's own demand at other locations."].)

District possessed the authority to develop and operate the Solar Project—a determination that included the trial court's conclusion that the Solar Project was eligible for the RES-BCT program. The City did not do so. Instead, the City raised the issue only in its response brief to the District's appeal—a decision that had the effect of forfeiting the issue. (See, e.g., *Celia S. v. Hugo H.* (2016) 3 Cal.App.5th 655, 665 [respondents who fail to file a cross-appeal cannot claim error in connection with opposing party's appeal]; *Preserve Poway v. City of Poway* (2016) 245 Cal.App.4th 560, 585 [" 'To obtain affirmative relief by way of appeal, respondents must themselves file a notice of appeal and become cross-appellants.' "].) Thus, the way in which the City "raised" this issue in the appeal in the 2016 lawsuit certainly did not place the District on notice that the City believed the issue remained unsettled and planned to raise the RES-BCT eligibility issue at a later date.

The City also suggests that laches should not apply because "this is a new case . . . involving a new decision by the District." However, the Solar Project is the very same Solar Project that the District has been pursuing since at least 2014, albeit with a de minimis adjustment of the site 660 feet away from the southern property line in order to satisfy at least one of the City's zoning requirements. The District has never veered from its initial selection of the Hesperia Farms Property as the location for the Solar Project during the five-plus years that the City and the District have been embroiled in a dispute over the project. Not only has the Solar Project's proposed location always been the Hesperia Farms Property, but nothing has changed with respect to the language of section 2830 or the RES-BCT program requirements that would have raised a new question about whether a solar farm on the Hesperia Farms Property would be eligible to utilize the RES-BCT program. In other words, everything about the planning for the Solar

Project and the statutory framework of the RES-BCT program was such that the City *could have raised its question about the eligibility of the Solar Project for the RES-BCT program in 2016*; there is nothing about the District's second attempt to make a supportable no-feasible-alternative finding or the state of the law that suddenly triggered a new claim about the eligibility of the Solar Project for the RES-BCT program only after the 2016 lawsuit concluded. The mere fact that the City appears to have considered the potential usefulness of the question only after the trial court in the 2016 lawsuit seems to have identified and addressed the issue does not mean that the underlying facts were new or that the City's claim arose at that point in time; it simply means that the City did not understand the legal effect of the facts at the time and failed to bring a claim that existed as surely in 2016 as it did when the City finally decided to raise the claim in this action.

As the trial court in this action determined, allowing the City to take a second bite of the proverbial apple at this point in time would be unjust to the District. By delaying raising this issue for multiple years *after* the District entered into the Interconnection Agreement for the purpose of developing the Solar Project—when the City could have raised the issue prior to or even during the 2016 lawsuit—the City has prejudiced the District by not only inducing the District to pursue the Solar Project through lengthy and costly litigation and technical analysis, but by placing at risk the District's ability to benefit from the 2015 Interconnection Agreement that it entered with SCE.

We therefore conclude that the trial court did not abuse its discretion in concluding that laches prevents the City from raising the question of the Solar Project's eligibility for the RES-BCT program.

2. *Even if the trial court had erred with respect to the laches ruling, the City cannot demonstrate that the Solar Project is ineligible for the RES-BCT program*

Although the trial court determined that it would have ruled in favor of the City but for the court's determination that laches applied to bar the City's belated assertion of the Solar Project's ineligibility for the RES-BCT program, we reach a different conclusion on the merits of the eligibility question. Our conclusion in this regard provides an alternative basis for our affirmance of the trial court's denial of the City's petition with respect to the first cause of action.

The City alleges in the first cause of action that the Hesperia Farms Property is not within the District's "geographical boundary," as that term is used in subdivision (a)(4)(C) of section 2830. The District disagrees. In the context of a trial court's denial of a writ of mandate, we review de novo an issue that turns on a question of statutory interpretation. (See, e.g., *California Manufacturers & Technology Assn. v. Office of Environmental Health Hazard Assessment* (2023) 89 Cal.App.5th 756, 769; *California Charter Schools Assn. v. City of Huntington Park* (2019) 35 Cal.App.5th 362, 369; *Walker v. City of San Clemente* (2015) 239 Cal.App.4th 1350, 1363.)

In considering an issue of statutory interpretation, " 'our primary task is to determine the lawmakers' intent.' " (*MacIsaac v. Waste Management Collection & Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1082.) " 'We start with the statute's words, which are the most reliable indicator of legislative intent.' [Citation.] ' "We interpret relevant terms in light of their ordinary meaning, while also taking account of any related provisions and the overall structure of the statutory scheme to determine what interpretation best advances the Legislature's underlying purpose." ' [Citations.] 'If we find the statutory language ambiguous or subject to more than one interpretation, we

may look to extrinsic aids, including legislative history or purpose to inform our views.' [Citation.]" (*In re A.N.* (2020) 9 Cal.5th 343, 351–352.)

Section 2830 was first introduced in February 2008 as Assembly Bill No. 2466. The statute sets out a number of interrelated provisions that create the RES-BCT program; it was created in order "to allow local government entities to credit energy produced from renewable resources owned by the local entity against their electricity usage on more than just the facility where the renewable generator is located." (Assem. Com. on Utilities and Commerce, Bill Analysis Report Assem. Bill No. 2466 for hearing April 7, 2008 (2007-2008 Reg. Sess.), as introduced.)

As section 2830 reads currently (and at the time that the City filed this action), it references the "geographical boundary" or "geographical boundaries" of a governmental entity with respect to its definition of a "[b]enefiting account"—i.e., the account to which any credits earned through a renewable generating facility are applied to offset the governmental entity's energy cost burden—and with respect to its definition of an "[e]ligible renewable generating facility"—i.e., the facility that generates the energy credits with which the governmental entity will be credited.[18]

As relevant here, section 2830 defines a "[b]enefiting account" in part as follows:

> "(1) 'Benefiting account' means an electricity account, or more than one account, that satisfies any of the following:

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18 Section 2830 was amended in 2021, effective January 1, 2022, to add tribes to the list of governmental entities authorized to utilize the RES-BCT program. (Stats. 2021, ch. 141 (Sen. Bill No. 479), § 1, eff. Jan. 1, 2022.) The amendment to section 2830 that occurred during the pendency of this action has not altered the statutory language at issue in this matter, and we therefore use the current statutory language unless a prior version of the statutory language is relevant to a particular point.

> "(A) The account or accounts are located within the *geographical boundaries* of a local government or, for a campus, within the geographical boundary of the city, county, or city and county in which the campus is located, with the account or accounts being mutually agreed upon by the local government or campus and an electrical corporation." (§ 2830, subd. (a)(1)(A), italics added.)

Section 2830 also sets out the definition of an "[e]ligible renewable generating facility" as follows:

> "(4) 'Eligible renewable generating facility' means a generation facility that meets all of the following requirements:
>
> "(A) Has a generating capacity of no more than five megawatts.
>
> "(B) Is an eligible renewable energy resource, as defined in Article 16 (commencing with Section 399.11) of Part 1.
>
> "(C) Is located within the *geographical boundary* of the local government or, for a campus, within the geographical boundary of the city or city and county, if the campus is located in an incorporated area, or county, if the campus is located in an unincorporated area or, for a tribe, on land owned by or under the jurisdiction of the tribe.
>
> "(D) Is owned by, operated by, or on property under the control of the local government, campus, or tribe.
>
> "(E) Is sized to offset all or part of the electrical load of the benefiting account. For these purposes, premises that are leased by a local government, campus, or tribe are under the control of the local government, campus, or tribe." (§ 2830, subd. (a)(4), italics added.)

Section 2830 does not provide a definition of the terms "geographical boundaries" and "geographical boundary,"[19] and there is no definition provided elsewhere within the Public Utilities Code. We also have not found a definition of the "geographical boundary" in the regulations issued by the Public Utilities Commission.

Therefore, in order to give meaning to the phrase "geographical boundary," we begin by looking to the words themselves to discern what the Legislature intended by stating that an eligible renewable generating facility is to be "located within the geographical boundary of the local government." (See *In re A.N.*, *supra*, 9 Cal.5th at p. 351 [first step in statutory analysis is to look at the words of the statute to discern legislative intent].) As the City notes, the Merriam-Webster Dictionary defines the word "geography" to include " 'a science that deals with the description, distribution, and interaction of the diverse physical, biological, and cultural features of the earth's surface' " and " 'the geographic features of an area.' " (https://www.merriam-webster.com/dictionary/geography, as of April 26, 2022.) In common understanding, therefore, "geographical" is an adjective suggesting a relationship to land. A "boundary" is " 'something that indicates or fixes a limit or extent.' " (See <https://www.merriam-webster.com/dictionary/boundary> [as of July 12, 2023 - <https://perma.cc/7H93-ANZH>].) Thus, the most reasonable interpretation of the phrase "geographical boundary of a local government" is that it refers to a fixed demarcation of a physical area of land governed by a local government; in other words, the "geographical boundary of a local

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19 For ease of reference, we will generally refer to the singular "geographic boundary," but we intend for our discussion to cover both the singular and plural forms of the phrase.

government" as used in section 2830 refers to an area that is subject to the governing authority of the local government at issue.[20]

In applying this meaning of the phrase "geographical boundary of a local government," we begin with the understanding that the area over which a governmental entity "governs" must be considered in relationship to the *purpose, functions, and powers* of the governmental entity at issue. This is because the governing authority of a particular governmental entity depends on the nature of that governmental entity and the functions with which it has been tasked. For example, a city or county is typically a general-purpose agency that engages in a broader variety of functions and has a greater number of powers than a special purpose agency, like the District, which is often tasked with a single or small set of functions and has more limited powers. (See 1 Martinez, Local Government Law (2d ed. 2012).) Special purpose agencies of local government, § 2:16 ["The key distinguishing factor between general purpose and special purpose units is in the scope of delegated powers granted by the sovereign to the entity in question," and "the purposes which a special purpose unit is created to serve are much narrower than those of general purpose units."].) Therefore, for a special purpose agency, such as the District, an "eligible renewable generating facility" under section 2830 must be located on land that the agency *governs in connection with its essential functions*.

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20 The City argues, "[t]he term 'geographical boundary' is different than mere ownership and use of the land; it encompasses a concept concerning the region, jurisdiction, and physical boundaries of the local government," and instead refers to an area "that is governed by the local government in question." We agree, in that it seems self-evident that a city or county's "geographical boundary" may extend beyond a particular parcel of land owned by a city or county, for example.

Here, the record demonstrates that the District "governs" the Hesperia Farms Property in relation to at least one of its essential functions. The District exists to provide two essential functions to the public: water service and wastewater service. As the record demonstrates, the Hesperia Farms Property is subject to the District's authority in connection with its wastewater service function. For example, the District has developed a facility known as the "Hesperia Effluent Management Site" on the Hesperia Farms Property for the purpose of discharging and percolating treated effluent. Specifically, the District conveys its treated effluent directly from the District's Grass Valley Wastewater Treatment Plant into the percolation ponds at the "Hesperia Effluent Management Site" facility on the Hesperia Farms Property. The percolation ponds allow the treated wastewater to then be reintroduced into state's groundwater supply in the Mojave River groundwater basin. The Hesperia Farms Property is therefore fundamental to the wastewater services the District provides to the public—one of the District's two main and essential functions. The District could not complete its wastewater management function without having authority over the Hesperia Farms Property. The Hesperia Farms Property may therefore be properly understood to be considered part of the area over which the District governs, and a renewable energy facility that is developed there would be located within the District's "geographic boundary" for purposes of section 2830.

A review of the history of the statute and legislative history material further supports our interpretation of the statute as applied in this case. As originally enacted in 2008, section 2830 permitted only a "local government" to use the RES-BCT program, which was defined to mean a "a city, county, whether general law or chartered, city and county, special district, school

district, political subdivision, or other local public agency, if authorized by law to generate electricity, but shall not mean the state, any agency or department of the state, or joint powers authority." (See Stats. 2008, ch. 540 (Assem. Bill No. 2466), § 1.) In addition, as originally introduced, Assembly Bill No. 2466 did *not* include the "geographical boundary" language.[21] The legislation was only later amended to include in the definition of a benefiting account that it be "located within the geographical boundaries of a local government," and to include in the definition of an eligible renewable generating facility that the facility be "located within the geographical boundary of" a local government. (Assem. Bill No. 2466 (2007-2008 Reg. Sess.), as amended Aug. 4, 2008.) Our review of various legislative history materials from this time period has revealed no information as to why the Legislature revised the introduced legislation to add the "located within the geographical boundaries of a local government" language.

In 2009, section 2830 was amended to permit "campus[es]" to utilize the RES-BCT program as well, as long as the eligible renewable generating facility of the campus is "within the geographical boundary of the city or city and county, if the campus is located in an incorporated area, or county, if the campus is located in an unincorporated area." (See Stats. 2009, ch. 380 (Assem. Bill No. 1031), § 1.)

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21 Instead, a benefiting account was originally defined as "an electricity account, or more than one account, mutually agreed upon by a governmental entity and an electrical corporation." (Assem. Bill No. 2466 (2007-2008 Reg. Sess.), as introduced Feb. 21, 2008.) Similarly, the original version of Assembly Bill No. 2466 proposed the following definition of an eligible renewable generating facility: "a generation facility that is an eligible renewable energy resource pursuant to the California Renewables Portfolio Standard Program that is owned or operated by a city, county, city and county, or joint powers agency formed by a city, county, or city and county." (*Ibid.*)

Then, in 2016, the Legislature again amended section 2830 to allow certain joint powers authorities to take advantage of the RES-BCT program by adding them to the definition of "local government." (Stats. 2016, ch. 659 (Assem. Bill No. 1773), § 1.)[22] A " 'local government' " for purposes of section 2830 now also includes "a joint powers authority formed pursuant to the Joint Exercise of Powers Act . . . that has as members public agencies located within the same county and same electrical corporation service territory, but shall not mean the state, any agency or department of the state, other than an individual campus of the University of California or the California State University, or any joint powers authority that has as members public agencies located in different counties or different electrical corporation service territories, or that has as a member the federal government, any federal department or agency, this or another state, or any department or agency of this state or another state." (Stats. 2016, ch. 659 (Assem. Bill No. 1773), § 1.)

Most recently, as we noted in footnote 19 in part III.B.2, *ante*, section 2830 has again been amended by the Legislature to allow tribes to participate in the RES-BCT program. (See Stats. 2021, ch. 141 (Sen. Bill No. 479), § 1, eff. Jan. 1, 2022.) Pursuant to this amendment, an eligible renewable generating facility owned by tribe must also be located "on land owned by or under the jurisdiction of the tribe," while any benefiting account must "belong to a tribe and [be] located on land owned by or under the jurisdiction of the tribe, if the eligible renewable generating facility and electricity account or accounts are wholly located within a single county within which the tribe is

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22 Between 2009 and 2016, two other sets of amendments were made to section 2830, however those amendments are not relevant to our discussion. (See Stats. 2011, ch. 478 (Assem. Bill No. 512), § 1; Stats. 2012, ch. 162 (Sen. Bill No. 1171), § 161.)

located and electrical service is provided by a single electrical corporation, with the account or accounts being mutually agreed upon by the tribe and the electrical corporation."

What becomes clear from the Legislature's additions to section 2830 is that the Legislature was seeking to increase the number and type of entities that can benefit from the RES-BCT program while at the same time avoiding complications that could arise if a governmental entity attempts to obtain energy credits from one electrical corporation but apply those credits to an account serviced by a different electrical corporation.[23]

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[23] That this has been the Legislature's concern is supported by the legislative history of the 2016 amendment to section 2830, which authorized certain joint powers authorities to participate in the RES-BCT program:

> "At the RES-BCT program[']s formation under [Assem. Bill No.] 2466, JPAs [joint powers authorities] were explicitly excluded because of geographical concerns. These concerns were raised because JPAs across the state are extremely diverse in their goals, size, members, and locations. The territory of a JPA varies and depends on the makeup of its members.
> "[¶] . . . [¶]
> "Had JPAs been included in [Assem. Bill No.] 2466, contracts between JPAs and . . . IOUs could have included benefit[ ]ing accounts and generation facilities spread out across large geographical areas, crossing county and even state lines and utility territories.
> "[¶] . . . [¶]
> "[Assem. Bill No. 1773] attempts to address many of the initial concerns which excluded JPAs from the RES-BCT program at the program's inception. Specifically, this bill attempts to limit the geographical size of participating JPAs by allowing participation only by JPAs whose members are in the same county and are served by the same electrical corporation. Furthermore, [Assem. Bill No.] 1773 limits participating JPAs by allowing only JPAs whose benefit[ ]ing . . . accounts belong to members of the

It becomes clear from this review of the legislation's historical context that our interpretation of "geographical boundary of the local government" and our application of that interpretation is consistent with the Legislature's expressed purpose and concerns regarding the RES-BCT program. All of the land over which the District possesses some authority in connection with its primary service functions, including the Hesperia Farms Property, is located within San Bernardino County and is served by SCE, the electrical corporation with which the District entered into the Interconnection Agreement that is necessary for the District's participation in the RES-BCT program. Thus, the purpose of section 2830—i.e., the encouragement of local governments to supply energy derived from renewable energy sources in order to meet their own energy demands while avoiding cross-county and cross-energy corporation benefiting and generating accounts—is served by the District's planned development of a renewable generating facility at its Hesperia Farms Property location.

Although the City does not expressly say so, the City's argument that the Hesperia Farms Property is located outside of the District's "geographical boundary" appears to hinge on the idea that an area that is "governed by" the District is equivalent to the District's "service area"—i.e, the outer limit of the area over which the District has been authorized to provide water and/or wastewater services to the public. There is no dispute that the Hesperia Farms property is not located within District's water and wastewater *service*

> JPA and are located within the geographical boundaries of the group of public agencies that formed the JPA . . . or accounts must be mutually agreed upon by the JPA and the electrical corporation." (Sen. Com. on Energy, Utilities and Communications, Analysis of Assem. Bill No. 1773 (2015-2016 Reg. Sess.) June 21, 2016.)

area boundaries. We are not convinced, however, that the District's service area is equivalent to the "geographic boundary" of a special district for purposes of the RES-BCT program. In part, we question such a definition because a special district may have different service area boundaries for the different services it provides, making it difficult to discern which service area should define a special district's "geographic boundary." For example, the record demonstrates that the District's water service boundary is not the same as the District's wastewater service boundary.[24] Further, we disagree with the idea that a special district may not possess certain limited governing powers that extend beyond that special district's service area, particularly where the area in question is fundamental to the provision of those services. As result, we do not accept the City's implied contention that the District's "geographical boundary" is equivalent to the District's service area.

We therefore reject the City's additional argument for reversal of the judgment on the ground that the Hesperia Farms Property is not within the

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[24] For example, the following figure is taken from a 2014 United States Bureau of Reclamation Study Report regarding the District's future water and energy needs, and it demonstrates how the District's water service sewer/wastewater service boundaries are not coextensive.

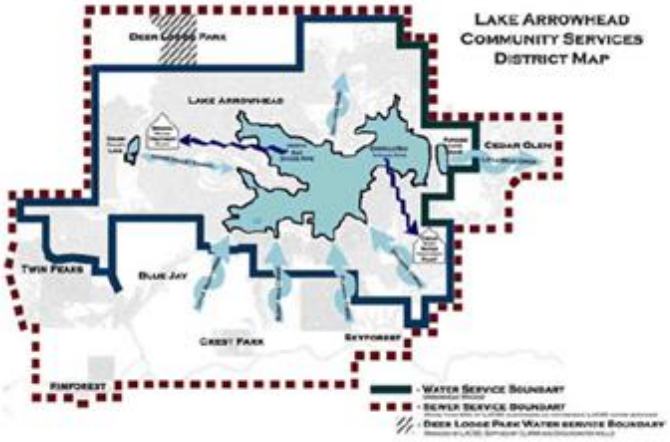

Figure 3: Lake Arrowhead Community Services District Map

District's "geographical boundary" and therefore was not eligible for use under the RES-BCT program.

C. *The trial court did not err with respect to its ruling as to the third cause of action*

The City contends that its challenge to the eligibility of a solar farm on Hesperia Farms Property for purposes of the RES-BCT program also undermines the District's finding that there are no feasible alternatives to the Solar Project being located on the Hesperia Farms Property. The City argues that the District's alternatives analysis, which the District used to support its finding that there was no other feasible location than the Hesperia Farms Property for a solar farm project, suffered from "a fatal flaw in that it rests upon the assumption the Hesperia Farms site is an eligible site for a generating facility under the RES-BCT program." As the City explains, under its view of the meaning of the section 2830, the Hesperia Farms Property "is not within the District's geographical boundary," which renders unsupportable the District's conclusion that the Hesperia Farms Property location is the only feasible option.

This remaining contention on appeal also fails. As previously discussed, we have concluded on the merits that the City has failed to establish that the Hesperia Farms Property is not eligible for the RES-BCT program. Thus, the "fatal flaw" that the City points to in the District's analysis (i.e. that it presupposes that the Solar Project would be eligible for RES-BCT program benefits) is no flaw at all. The City has failed to demonstrate that there is insufficient evidence to support the trial court's denial of the writ of mandate as to the City's third cause of action. Accordingly, we affirm.

IV.

DISPOSITION

The judgment of the trial court is affirmed. The District is entitled to costs on appeal.

McCONNELL, P. J.

WE CONCUR:

IRION, J.

KELETY, J.

(FOR LAFCO USE ONLY)

SUPPLEMENT
ANNEXATION, DETACHMENT, REORGANIZATION PROPOSALS

INTRODUCTION: The questions on this form are designed to obtain data about the specific annexation, detachment and/or reorganization proposal to allow the San Bernardino LAFCO, its staff and others to adequately assess the proposal. You may also include any additional information which you believe is pertinent. Use additional sheets where necessary, and/or include any relevant documents.

1. Please identify the agencies involved in the proposal by proposed action:

ANNEXED TO	DETACHED FROM
Lake Arrowhead Community Services District	

2. For a city annexation, State law requires pre-zoning of the territory proposed for annexation. Provide a response to the following:

   a. Has pre-zoning been completed? YES ☐ NO ☐
   b. If the response to "a" is NO, is the area in the process of pre-zoning? YES ☐ NO ☐

   Identify below the pre-zoning classification, title, and densities permitted. If the pre-zoning process is underway, identify the timing for completion of the process.

   N/A

3. For a city annexation, would the proposal create a totally or substantially surrounded island of unincorporated territory?
   YES ☐ NO ☐ If YES, please provide a written justification for the proposed boundary configuration.

   N/A

4. Will the territory proposed for change be subject to any new or additional special taxes, any new assessment districts, or fees?

   No

(FOR LAFCO USE ONLY)

5. Will the territory be relieved of any existing special taxes, assessments, district charges or fees required by the agencies to be detached?

Yes. LACSD will be relieved of its obligations to pay property taxes.

6. If a Williamson Act Contract(s) exists within the area proposed for annexation to a City, please provide a copy of the original contract, the notice of non-renewal (if appropriate) and any protest to the contract filed with the County by the City. Please provide an outline of the City's anticipated actions with regard to this contract.

N/A

7. Provide a description of how the proposed change will assist the annexing agency in achieving its fair share of regional housing needs as determined by SCAG.

The Hesperia Farms Property is vacant land used by LACSD to discharge and percolate treated effluent into the Mojave River groundwater basin. There are no residences thereon. The County designates the land as "Floodway," given its close proximity to the Mojave River, and the land use is identified as "electrical facility." Thus, at this time, LACSD does not foresee any present or future housing on the Hesperia Farms Property.

8. **PLAN FOR SERVICES**:

For each item identified for a change in service provider, a narrative "Plan for Service" (required by Government Code Section 56653) must be submitted. This plan shall, at a minimum, respond to each of the following questions and be signed and certified by an official of the annexing agency or agencies.

A. A description of the level and range of each service to be provided to the affected territory.

B. An indication of when the service can be feasibly extended to the affected territory.

C. An identification of any improvement or upgrading of structures, roads, water or sewer facilities, other infrastructure, or other conditions the affected agency would impose upon the affected territory.

D. The Plan shall include a Fiscal Impact Analysis which shows the estimated cost of extending the service and a description of how the service or required improvements will be financed. The Fiscal Impact Analysis shall provide, at a minimum, a five (5)-year projection of revenues and expenditures. A narrative discussion of the sufficiency of revenues for anticipated service extensions and operations is required.

(FOR LAFCO USE ONLY)

E. An indication of whether the annexing territory is, or will be, proposed for inclusion within an existing or proposed improvement zone/district, redevelopment area, assessment district, or community facilities district.

F. If retail water service is to be provided through this change, provide a description of the timely availability of water for projected needs within the area based upon factors identified in Government Code Section 65352.5 (as required by Government Code Section 56668(k)).

CERTIFICATION

As a part of this application, the City/Town of _____, or the Lake Arrowhead Community Services District District/Agency, _____ (the applicant) and/or the _____ (real party in interest - landowner and/or registered voter of the application subject property) agree to defend, indemnify, hold harmless, promptly reimburse San Bernardino LAFCO for all reasonable expenses and attorney fees, and release San Bernardino LAFCO, its agents, officers, attorneys, and employees from any claim, action, proceeding brought against any of them, the purpose of which is to attack, set aside, void, or annul the approval of this application or adoption of the environmental document which accompanies it.

This indemnification obligation shall include, but not be limited to, damages, penalties, fines and other costs imposed upon or incurred by San Bernardino LAFCO should San Bernardino LAFCO be named as a party in any litigation or administrative proceeding in connection with this application.

As the person signing this application, I will be considered the proponent for the proposed action(s) and will receive all related notices and other communications. I understand that if this application is approved, the Commission will impose a condition requiring the applicant and/or the real party in interest to indemnify, hold harmless and reimburse the Commission for all legal actions that might be initiated as a result of that approval.

As the proponent, I acknowledge that annexation to the City/Town of _____ or the Lake Arrowhead Community Services District District/Agency may result in the imposition of taxes, fees, and assessments existing within the (city or district) on the effective date of the change of organization. I hereby waive any rights I may have under Articles XIIIC and XIIID of the State Constitution (Proposition 218) to a hearing, assessment ballot processing or an election on those existing taxes, fees and assessments.

I hereby certify that the statements furnished above and the documents attached to this form present the data and information required to the best of my ability, and that the facts, statements, and information presented herein are true and correct to the best of my knowledge and belief.

DATE April 20, 2023

_____
SIGNATURE

Lake Arrowhead Community Services District
Printed Name of Applicant or Real Property in Interest
(Landowner/Registered Voter of the Application Subject Property)

General Manager
Title and Affiliation (if applicable)

/REVISED: krm – 8/19/2015

PLAN FOR SERVICES

Attachment to Supplement

Annexation, Detachment, Reorganization Proposals

Lake Arrowhead Community Services District

A. A description of the level and range of each service to be provided to the affected territory.

The District is authorized to provide water and wastewater services within its sphere of influence. The Hesperia Farms Property is vacant land, with only a few abandoned buildings and no people residing thereon. It is located at the northern base of the San Bernardino Mountains, near the Mojave River, and has been used by the District to store treated wastewater for nearly 50 years. The District wishes to annex the Hesperia Farms Property for the reasons asserted by LAFCO in 2010 in determining it should be part of the District's sphere of influence, including, but not limited to, offsetting its property taxes. These savings can be used for other purposes for the overall benefit of the District's rate payers. The abandoned buildings are outside the footprint of both the percolation ponds and proposed District solar project, and will not be affected in any way by the annexation; moreover, at its Board meeting of May 24, 2022, the District awarded a contract for the removal of the buildings and they were subsequently removed. Annexation will result in minimal impacts to adjacent land uses. There is no service of any kind anticipated to be provided to the affected territory.

There is a proposed solar project on the Hesperia Farms Property but, because of a recent appellate court ruling[1], it is unrelated to this application. As stated above, the annexation's purpose is to follow through with LAFCO's 2010 comments and offset the District's property taxes. These savings can be used for other purposes for the overall benefit of the District's rate payers.

B. An indication of when the service can be feasibly extended to the affected territory.

Not applicable. The Hesperia Farms Property does not and will not host any residences.

C. An identification of any improvement or upgrading of structures, roads, water or sewer facilities, other infrastructure, or other conditions the affected agency would impose upon the affected territory.

No service will be required to the Hesperia Farms Property. No residential or commercial occupancy on the Hesperia Farms Property is proposed. Aside from an unrelated solar project, no improvements or upgrading is anticipated on the Hesperia Farms Property proposed to be annexed.

[1] *See* City of Hesperia v. Lake Arrowhead Community Services District et al., San Bernardino Superior Court, Case No. CIVDS 2019176.

D. The Plan shall include a Fiscal Impact Analysis which shows the estimated cost of extending the service and a description of how the service or required improvements will be financed. The Fiscal Impact Analysis shall provide, at a minimum, a five (5)-year projection of revenues and expenditures. A narrative discussion of the sufficiency of revenues for anticipated service extensions and operations is required.

Not applicable. No Fiscal Impact Analysis attachment is required or included; there are no costs because there will be no extension of service to the Hesperia Farms Property. No revenues or expenditures are anticipated.

E. An indication of whether the annexing territory is, or will be, proposed for inclusion within an existing or proposed improvement zone/district, redevelopment area, assessment district, or community facilities district.

The Hesperia Farm Property will not be annexed into an existing improvement zone/district, redevelopment area, assessment district, or community facilities district.

F. If retail water service is to be provided through this change, provide a description of the timely availability of water for projected needs within the area based upon factors identified in Government Code Section 65352.5 (as required by Government Code Section 56668(k)).

Not applicable.

LOCAL AGENCY FORMATION COMMISSION
COUNTY OF SAN BERNARDINO

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PROPOSAL NO.: **LAFCO 3110**

HEARING DATE: **December 8, 2010**

RESOLUTION NO. 3117

A RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION OF THE COUNTY OF SAN BERNARDINO MAKING DETERMINATIONS ON LAFCO 3110 – A SERVICE REVIEW AND SPHERE OF INFLUENCE UPDATE FOR THE LAKE ARROWHEAD COMMUNITY SERVICES DISTRICT (sphere of influence expansion by approximately 1,140.3+/- acres which includes non-contiguous territory within the Hesperia community (344 +/- acres) and affirmation of the balance, as shown on the attached maps).

On motion of Commissioner Bagley, duly seconded by Commissioner Derry, and carried, the Local Agency Formation Commission adopts the following resolution:

WHEREAS, a service review mandated by Government Code 56430 and a sphere of influence update mandated by Government Code Section 56425 have been conducted by the Local Agency Formation Commission of the County of San Bernardino (hereinafter referred to as "the Commission") in accordance with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Sections 56000 et seq.); and,

WHEREAS, at the times and in the form and manner provided by law, the Executive Officer has given notice of the public hearing by the Commission on this matter; and,

WHEREAS, the Executive Officer has reviewed available information and prepared a report including her recommendations thereon, the filings and report and related information having been presented to and considered by this Commission; and,

WHEREAS, a public hearing by this Commission was called for December 8, 2010 at the time and place specified in the notice of public hearing and in an order or orders continuing the hearing; and,

WHEREAS, at the hearing, this Commission heard and received all oral and written protests; the Commission considered all plans and proposed changes of organization, objections and evidence which were made, presented, or filed; it received evidence as to whether the territory is inhabited or uninhabited, improved or unimproved; and all persons present were given an opportunity to hear and be heard in respect to any matter relating to the application, in evidence presented at the hearing; and,

WHEREAS, at this hearing, this Commission certified that the sphere of influence update including sphere amendments is statutorily exempt from environmental review pursuant to the provisions

of the California Environmental Quality Act (CEQA) and such exemption was adopted by this Commission on December 8, 2010. The Commission directed its Executive Officer to file a Notice of Exemption within five working days of its adoption; and,

WHEREAS, based on presently existing evidence, facts, and circumstances filed with the Local Agency Formation Commission and considered by this Commission, it is determined that the sphere of influence for the Lake Arrowhead Community Services District (hereafter shown as the "District") shall be amended as shown on the maps attached as Exhibit "A" to this resolution, defined as follows:

(1) Expand the District's sphere of influence to include Area 1 (approximately 1.3+/- acres), Area 2 (approximately 760+/- acres), Area 3 (approximately 18.3+/- acres), Area 4 (approximately 6.3+/- acres), Area 5 (approximately 6.4+/- acres), Area 6 (approximately 3.9+/- acres), and the 10 District-owned parcels located in and adjacent to the City of Hesperia (approximately 344.1+/- acres); and,

(2) Affirm the balance of the District's existing sphere of influence.

WHEREAS, the determinations required by Government Code Section 56430 and local Commission policy are included in the report prepared and submitted to the Commission dated November 30, 2010 and received and filed by the Commission on December 8, 2010, a complete copy of which is on file in the LAFCO office. The determinations of the Commission are:

1. **Growth and population projections for the affected area:**

Development in the San Bernardino Mountains is naturally constrained by rugged terrain, public land ownership, limited access, and lack of support infrastructure, as well as by planning and environmental policies which place much of the area off limits to significant development. Maximum build-out potential is substantially constrained by the slope-density standards and fuel modification requirements of the County General Plan Fire Safety Overlay. The Lake Arrowhead Community Plan identifies the private lands within the district as generally residential (RS-14M and RS-1) with scattered commercial along State Route 189, 173, Rim Forest and along the lake (Lake Arrowhead Village). The public lands within the district are designated Resource Conservation.

Roughly one-fifth of LACSD's area is within the San Bernardino National Forest (owned by the federal government), which are devoted primarily to resource protection and recreational use.

In general, the San Bernardino Mountains is one of the most densely populated mountain areas within the country, and is the most densely populated urban forest west of the Mississippi River. However, there is a large seasonal population component as well as a substantial influx of visitors to the mountain resort areas (approximately 25% of the residents are full-time). The seasonal population and visitors are not reflected in available demographic statistics, which count only year-round residents. It is estimated that the seasonal factors can approximately double the peak population.

Utilizing the Lake Arrowhead Community Plan, LACSD is estimated to have about 14,800 full-time residents in 2010. However, the District estimates its current population to be around 16,620. Either way, by 2030 the permanent population is estimated to reach over 22,000. This figure does not take into account seasonal population and tourism. Even with the large increase in population, the District's area is not anticipated to reach its build-out population by the 2030

horizon of this report. However, its water service area, generally that of the Arrowhead Woods, has denser land use which has impacted LACSD's ability to provide water.

Year	2000	2005	2010	2015	2020	2025	2030	2000 to 2030 growth rate
Lake Arrowhead CSD	12,040	*13,364*	*14,834*	*16,466*	*18,278*	*20,288*	*22,520*	*87.0%*
TOTAL	**12,040**	***13,364***	***14,834***	***16,466***	***18,278***	***20,288***	**22,520**	***87.0%***

Build-out	2030 as % of Build-out
61,871	36%

Source: County of San Bernardino 2007 Lake Arrowhead Community Plan
Notes: Does not include seasonal population or visitors
Italicized figures are calculated by LAFCO

2. Present and planned capacity of public facilities and adequacy of public services, including infrastructure needs or deficiencies:

LACSD provides wastewater (sewer) services throughout the district. The LACSD's primary water service area encompasses approximately 4,900 acres and is essentially the same boundary as the development area known as the Arrowhead Woods (also that of the Arrowhead Lake Association - an association formed for use of the private lake, membership is voluntary and is available to anyone who owns property in Arrowhead Woods). This reflects the District's boundary at the time of its formation.

There is one improvement district in Deer Lodge Park where water is supplied by the Crestline-Lake Arrowhead Water Agency and groundwater wells but managed by LACSD. In 1985, the District assumed ownership and control of the Deer Lake Water Corporation, which provided water to the residents of Deer Lodge Park ("DLP"). In 1985, the District formed the Deer Lodge Park Water system assessment district for infrastructure upgrades needed for water quality control purposes. Deer Lodge Park is outside of the District's water service area which uses Lake Arrowhead as source water; therefore, all water sold in Deer Lodge Park is either produced from existing wells within the area or purchased from the Crestline-Lake Arrowhead Water Agency (a State Water Project contractor) for sale in Deer Lodge Park.

Water

Crestline-Lake Arrowhead Water Agency ("CLAWA) is a State Water Project contractor and delivers wholesale water within its boundaries to private and public retail water providers. This area is located in the South Lahontan Hydrologic Region, as designated by the California Department of Water Resources, and is in the Mojave Watershed. Since CLAWA provides wholesale water to over twenty public and private water purveyors and camps.

Water is the lifeblood for communities due to its limited nature. This statement is as true for the San Bernardino Mountains as other areas of the County because it is one of the most densely populated mountain areas within the country and in general relies upon imported water from the State Water Project for domestic use. Therefore, the most significant regional issue is present and future water supply. The *2007 State Water Project Delivery Reliability Report* indicates that SWP deliveries will be impacted by two significant factors. First, it is projected that climate change is altering hydrologic conditions in the State. Second, a ruling by the Federal Court in

December 2007 imposed interim rules to protect delta smelt which significantly affects the SWP. Further, the *Report* shows, "...a continued eroding of SWP delivery reliability under the current method of moving water through the Delta" and that "annual SWP deliveries would decrease virtually every year in the future..." The *Report* assumes no changes in conveyance of water through the Delta or in the interim rules to protect delta smelt.

The 2007 Reliability Report concluded that contractors to the SWP could anticipate average reliability of 66-69% through the year 2027. The range was provided to account for variable impact associated with different conclusions about the potential effects of modeled climate change. The average assumes that in some years contractors are likely to be allocated less than the stated average and in some years contractors are likely to be allocated more than the stated average.

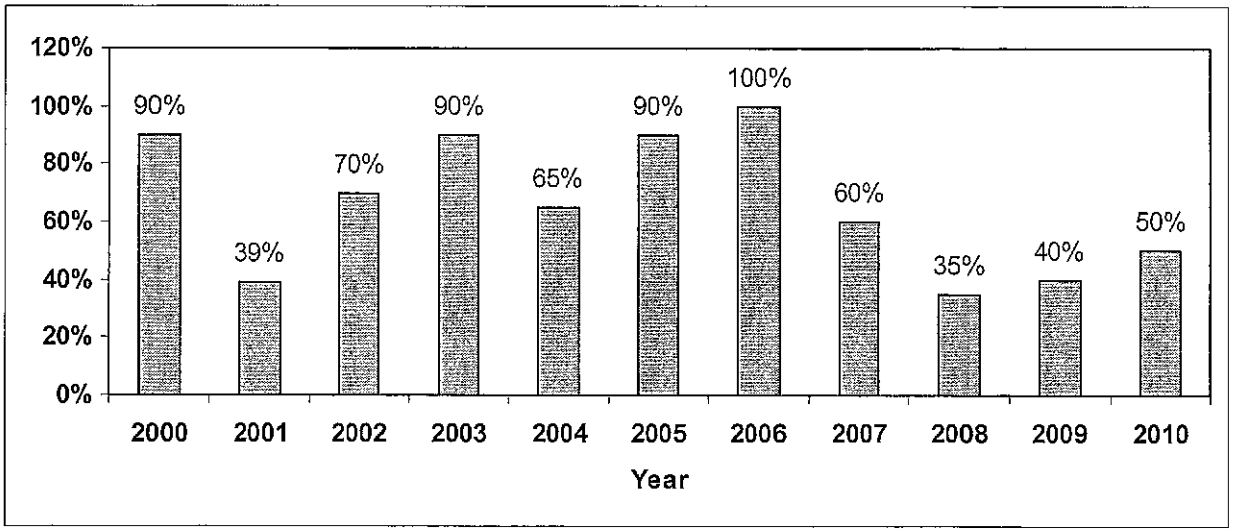
In 2009 the DWR provided an updated reliability report incorporating new biological opinions in place of the referenced interim rules promulgated by the Federal Court. The new biological opinions were significantly more restrictive than the interim rules and consequently the 2009 reliability analysis indicated a reduction in reliability to 61% for long-term (2029) conditions.

Since preparation of the 2009 Reliability Report, the same Federal Court has found the new biological opinions to be unacceptable (and inappropriately restrictive to Delta water exports) and has ordered them to be redone. At this writing yet another set of interim operational guidelines are being developed with the Court and are expected to be less restrictive to water exports than the biological opinions that were included in the DWR modeling for the 2009 Reliability Report. There is also a major effort underway to develop a habitat conservation plan to address the myriad of issues impacting water supply exports from the Delta. That effort, if accomplished in a manner consistent with the "co-equal goals" of ecosystem restoration and water supply reliability envisioned by the State Legislature's 2009 Comprehensive Water Package, is anticipated to significantly increase reliability of the SWP water supply. The eventual success and/or resulting increase to reliability are unknown at this time; however, the outcome will eventually be reflected in the biennial DWR reliability assessments.

The figure below shows the allocation percentage that State Water Contractors were allowed to purchase since 1998. For example, CLAWA (the State Water Contractor for the area) is entitled to purchase up to 5,800 acre-feet of imported water per year. As of June 23, 2010, for 2010 the allocation percentage is 50%[1]; therefore, CLAWA can purchase up to 2,900 acre-feet in 2010. This sharp reduction in supplemental water supply will reduce the amount of water that CLAWA can deliver to its retail and wholesale customers. This prompts water purveyors to scale back consumption annually, to aggressively promote water conservation measures, and to buy more expensive imported water. Finding efficiencies in managing limited supply sources is critical for the future of the community.

[1] State of California. Department of Water Resources. "Late Spring Weather Allows DWR to Increase Water Allocation", Press Release. 23 June 2010.

Department of Water Resources State Water Project Allocation Percentages Statewide (1998-2010)



source: Department of Water Resources

A complete service review was conducted for CLAWA in July 2010 (LAFCO 3107). The following are key points identified in the CLAWA service review.

- To date, CLAWA has indicated that the SWP allocation reductions have not adversely impacted the agency's ability to serve its retail and wholesale customers. CLAWA's retail deliveries averaged roughly 270 acre-feet/year for the past 10 years, which is a fraction of total water deliveries (16% of total deliveries to CLAWA from Lake Silverwood). Wholesale deliveries comprise the majority of CLAWA's water deliveries and the local retailers use this water to supplement their own local groundwater resources. CLAWA staff indicates that the local groundwater supply has been sufficient to date to satisfy local demand. Given this, retail and wholesale demand has not exceeded CLAWA's SWP allocation to date.

- CLAWA's SWP contract allows it to carry-over the unused portion of its allocation in the San Luis Reservoir in Merced County for use by CLAWA in a later year. The carry-over of water is subject to Department of Water Resources determining that there is adequate storage space in the reservoir. Anticipating that local and imported supply is not static, CLAWA has indicated that as of March 2010, it had 2,398 acre-feet of accumulated carry-over water at San Luis Reservoir for use in subsequent years if needed, dependent upon storage space in the reservoir.

- CLAWA pumps surface water from Silverwood Lake, treats and disinfects the water at a "multi-barrier" treatment plant located near the south shore of the Lake, then pumps the treated water uphill to CLAWA's storage and pipeline distribution system. Once the water is treated and pumped up the mountain, it can then be delivered to its wholesale purveyors and retail customers. However, some retail water purveyors may provide additional treatment for their own local water supplies and blend the supplemental supply with their groundwater resources.

Community Water

In the Lake Arrowhead Community, water is produced from local groundwater sources, Lake Arrowhead, and imported State Water Project Water. Lake Arrowhead Community Services District is the main retail water provider in the community and provides retail water from wells and Lake Arrowhead. Other public retail water providers include four improvement districts to CLAWA, County Service Area 70 Zone CG, and the Rimforest portion of the City of Big Bear Lake Department of Water and Power. Big Bear Lake - DWP succeeded to the water service territory previously assigned the Southern California Water Company – Big Bear District through the State Public Utilities Commission upon its acquisition by the City of Big Bear Lake. As a condition of the City's condemnation for acquisition, it was required to assume service responsibility for all of Southern California Water Company's service area in the mountains – including the Rimforest portion. In 1995, LAFCO granted the City of Big Bear Lake an exemption from the provisions of Government Code Section 56133 for the provision of water service within this certificated service area.

The larger private retail water entities include Alpine Water Users Association, Arrowhead Villas Mutual, Sky Forest Mutual, and Strawberry Lodge Mutual. Not all areas in the community have direct access to a municipal water provider; therefore, it is understood that water service to those developed properties is provided through on-site wells.

Water Rates

Retail water purveyors within CLAWA's boundaries are charged the same wholesale water rate no matter the location. The wholesale water rate has not been adjusted for over 15 years and is $1,150 per acre-foot. A sampling of the residential retail water rates of the larger agencies within the CLAWA service area is identified in the chart below.

Residential Water Rate Comparison (2010)
(rates measured in units, or one hundred cubic feet)

Agency	Water Use Rate				Monthly Meter Charge (3/4" Meter)	Monthly Avg. Cost (20 units of water)
	Tier One	Tier Two	Tier Three	Tier Four		
Alpine Water Users Association	$3.30	$6.60	-	-	$30.00	$112.50
Arrowbear Park County Water District	-	4.90	-	-	19.50	88.10
Cedar Pines Park Mutual Water Co.	5.50	7.00	10.00	-	30.76	179.76
County Service Area 70 Zone CG	4.69	5.21	5.73	6.30	61.80	158.72
Crestline-Lake Arrowhead Water Agency (Improvement Districts A & C) [1]	-	$7.25	-	-	15.00	141.88
Crestline-Lake Arrowhead Water Agency (Improvement District B) [1]	-	$5.00	-	-	10.00	97.50
Crestline-Lake Arrowhead Water Agency (Improvement District D) [1, 2]	-	$7.25	-	-	25.00	151.88
Crestline Village Water District	4.20	6.30	-	-	19.75	118.45
Department of Water & Power City of Big Bear Lake	4.43	-	-	-	40.60	129.20
Green Valley Mutual Water Company	2.40	7.75	-	-	30.50	137.35
Lake Arrowhead Community Services District (Arrowhead Woods)	0.68	1.74	6.21	12.93	20.60	79.27
Lake Arrowhead Community Services District (Deer Lodge Park)	3.27	3.90	-	-	22.52	94.22
Running Springs Water District	3.26	-	-	-	18.15	83.35

Rates rounded to the nearest hundredth
[1] CLAWA retail rates are for 5/8" meter
[2] $25 monthly meter charge includes $10 charge for loan repayment

Supply

The District currently has three sources of water for potable use to serve its primary water service area also known as the Arrowhead Woods; (1) groundwater from six wells located in the Grass Valley Basin, (2) surface water from Lake Arrowhead, and (3) State Water Project water delivered by Crestline-Lake Arrowhead Water Agency (described in.detail below).

(1) Groundwater from five wells located in the Grass Valley Basin

The Lake Arrowhead water service area comprises approximately 4,900 acres of mountainous terrain where about 40% of the land has slopes of more than 30% grade. The ground underneath the surface is mostly dense, fractured and jointed granite. This terrain is very difficult to develop groundwater wells. In contrast, the Big Bear area is comprised mostly of loose gravel, sand, and silt which allows for an ample storage capacity of groundwater.

Nevertheless, LACSD currently has five productive wells in the Grass Valley area that provide approximately 200 acre feet of groundwater. There are two production wells in

the Deer Lodge Park service area; they are currently out of service awaiting installation of a treatment system to remove uranium. It expects their return to service in 2011. Although the wells have been recently renovated, their historic production is roughly of 24-36 acre-feet/year each. LACSD has no plans in the foreseeable future to construct additional wells.

LACSD has base annual production (water rights) of 658 acre-feet per year in the Alto sub-basin through the adjudication of the Mojave River basin. Alto is currently at 80% rampdown, which allows LACSD to produce 527 acre-feet per year. LACSD did not purchase any water rights in the Alto sub-basin of the Mojave groundwater basin. The District acquired an agricultural entitlement from many years of growing alfalfa on the property and upon adjudication received the 658 acre-foot right. The well for the caretaker's house is the only current active use and represents usually less than one acre foot of use per year (the well production is metered). For the last several years LACSD has sold its available 527 acre-feet of Free Production Allowance to various other water users within the Alto basin. The District views this asset as a potential tool for negotiations for some sort of long-term permanent supplemental water supply or transportation agreement with the Mojave Water Agency.

(2) *Surface water from Lake Arrowhead*

The Arrowhead Lake Association (ALA) (owners of Lake Arrowhead and Grass Valley Lake) oversee the recreational use of Lake Arrowhead and the immediate lake shoreline and owns the land under the lake as well. In general, ALA has control over the lake's recreational use and LACSD has entitlement over the lake's retail water use. After experiencing near average precipitation during 2007-08, the precipitation in the Mojave River Watershed during 2008-09 as measured at Lake Arrowhead amounted to 13.76 inches, which is about 33 percent of the base period average of 41.50 inches.

During the recent period of drought, the level of Lake Arrowhead dropped dramatically causing many of the Arrowhead Woods residents to complain. As a result of inquiries made regarding the extraction of water from the Lake, the Department of Water Resources reconfirmed its original permit and ordered that the level of the lake be maintained for recreational uses, restricting the extractions for water consumption. In 2006, the State Water Resources Control Board issued Order No. WR 2006-001 (Order). The Order limits the District's withdrawals from Lake Arrowhead to 1,566 acre feet per year (afy) beginning in 2008 (a reduction of over 40%) and determines the lake level set at a specific elevation point. This prompted the LACSD to scale back consumption, to aggressively promote water conservation measures, and to find efficiencies in managing the limited supply. As a result, the District entered into a Memorandum of Understanding with the Arrowhead Lake Association to establish a goal to maintain the elevation of Lake Arrowhead at or above 5,100 foot elevation. The water master plan identifies that the District does not have adequate water supplies to meet the long-term demands of its current customer base as a result of a 40% reduction in the District's entitlement to Lake Arrowhead water.

Currently the District has not developed a reserve policy since it essentially has no reserve capacity due to the reduction in lake consumptive capacity.

(3) State Water Project water delivered by CLAWA

When CLAWA was originally proposed for formation in the State Legislature, its boundaries included Lake Arrowhead and the surrounding community of Arrowhead Woods. At the last minute, however, the major property owner of Lake Arrowhead elected to exclude the Lake Arrowhead community (Arrowhead Woods) from CLAWA's boundaries, confident that local water supplies in Lake Arrowhead would be sufficient to satisfy the consumptive needs of that community. The amended legislation excluded the Lake Arrowhead community but the original State Water Project entitlement amount (Table A water) of 5,800 acre-feet/year remained. The result through the years has been a lesser population repaying the debt service of the original 5,800 acre-feet/year entitlement.

As described above, the Department of Water Resources restricted the Lake Arrowhead water extractions for water consumption and determined that the lake be set at a specific elevation point. One option considered by LACSD was to import State Water Project Water directly from CLAWA. However, Arrowhead Woods is not within the boundaries of CLAWA, and pursuant to CLAWA Law and its contract with the State, CLAWA could not provide supplemental water outside of its boundaries.

To address water shortage concerns in Lake Arrowhead while also strengthening the reliability of CLAWA's supply to its own customers, in 2005 CLAWA entered into short term agreements with San Bernardino Valley Municipal Water District ("Muni") and with LACSD for the purchase of water from Muni, treatment and transportation of that water through CLAWA 's transmission system (as capacity may be available in the CLAWA 's system during periods of off-peak demands) for delivery of that treated water into the LACSD's system for its use in lieu of water from Lake Arrowhead. A significant element of the arrangement is that CLAWA has pre-purchased 7,600 acre-feet of water from Muni, which will be taken from Muni's future allocations of imported water from the State Water Project. During August 2005, and in accordance with the agreement, CLAWA paid to Muni the total sum of $4,006,680 as full payment for the Exchange Water, approximately $527 per acre foot.

This arrangement does not involve the delivery of any portion of CLAWA's State Water Project water, since the water comes from Muni, but it commits virtually all of CLAWA's off-peak treatment and transmission system capacity for the delivery of treated water to LACSD. The term of the arrangement is for approximately ten to fifteen years, or until the total of 7,600 acre-feet of water purchased from Muni has been delivered to LACSD. However, the arrangement has produced only a temporary solution to the water supply issues confronting the Lake Arrowhead area. CLAWA anticipates that the parties may wish to extend the short-term arrangement into a long-term arrangement designed to address the water shortage concerns in the Arrowhead Woods area.

CLAWA has issued the following as an explanation of the project and the significant terms of the arrangement[2]:

1. *Muni receives an annual allocation of imported water from the State Water Project. Its allocated water flows into Silverwood Lake, then through the San Bernardino Tunnel for delivery to Muni in the valley below. Unlike CLAWA, Muni*

[2] CLAWA. "News and Notes". website, www.clawa.org, Accessed 27 April 2010, Last update unknown.

has the unique right to sell and deliver its annual allocation of State water to areas beyond its boundaries.

2. *CLAWA has facilities in place to take water from Silverwood Lake, treat the water at its treatment plant on the south shore of the lake, pump the water uphill nearly 2,000 feet to Crestline, store the treated water, and then pump it eastward through transmission pipelines to a location near the retail water system of the LACSD.*

3. *CLAWA has purchased from Muni the right to take 7,600 acre-feet of imported water over a period of 15 years from Muni's future allocations of water from the State Water Project.*

4. *CLAWA has entered into an agreement with LACSD for the purchase, treatment, pumping, transportation and delivery of that water to LACSD's retail water system through CLAWA facilities as capacity in those facilities may be available. This capacity is in excess of the capacity needed by CLAWA to treat and deliver water to its own customers. None of the water delivered to LACSD pursuant to this arrangement will come from CLAWA's annual allocation of water from the State. All of it will come from Muni's allocation.*

5. *CLAWA's charge to LACSD for the purchase, treatment, pumping, storage, transportation and delivery of this water consists of several elements as follows:*

    a. *The price which CLAWA must pay to Muni in the year of delivery for water taken from Muni's allocation of imported water that year, which is equal to Muni's actual charges paid to the State for the water (not including Muni's capital costs). That charge is estimated to be $527.19 per acre-foot, but may vary from year to year, to reflect what Muni must pay to the State that year for water delivered to Silverwood Lake.*

    b. *$100 per acre-foot of water delivered to LACSD, to recover lost earnings on funds advanced by CLAWA to pre-purchase 7,600 acre-feet of water.*

    c. *Approximately $2,000 per acre-foot for the cost of treating the water, pumping it up the mountain to the LACSD system, and recovery of an amortized portion of the capital cost of CLAWA's intake facilities, treatment plant, pump stations, reservoirs and pipeline facilities to treat, pump, store, transport and deliver the water to the LACSD's retail water system. This charge is subject to adjustment each year to reflect changes in the actual cost of energy incurred in treating, pumping and transporting the water.*

In September 2009, LACSD and CLAWA amended the agreement to include annual minimum purchases by LACSD and adjustments to the price charged to LACSD per acre-foot of water.

The total charge to LACSD is roughly $2,627 per acre-foot (subject to annual adjustment) for purchase, treatment, pumping, storage, transportation, and delivery of the supplemental water. As of June 30, 2009, LACSD has purchased 1,221.59 acre-feet from CLAWA, at an estimated cost of $2,787.83 per acre-foot. A summary of the LACSD purchases of Exchange Water is shown in the figure below:

Year Ending June 30	Lake Arrowhead CSD Purchase		Exchange Water Remaining
	acre-feet	cost	
2007	81.49	$230,012	7,518.51
2008	970.52	$2,716,345	6,547.99
2009	169.58	$459,237	6,378.41

Source: CLAWA Financial Statements for FY 2007-08 and FY 2008-09

Demand

The District owns and operates three water treatment plants with a combined permitted treatment capacity of seven million gallons per day (mgd). The current average annual daily demand on the water system is 2.3 mgd. However, because the residential makeup of the District is highly seasonal, daily demand increases during weekends and holidays. Summer holiday peak daily demand can reach six mgd and at full build out the peak daily demand is estimated to be 7.25 mgd, which will require an upgrade to one of the two water treatment plants. Build out of the District's water service area is not expected to occur until sometime after 2025 depending on the rate of growth and the number of buildable lots. The District currently maintains 18 water storage reservoirs, nine pressure tanks, and 22 water pumping stations.

The District currently has roughly 8,200 water connections in the Arrowhead Woods water service area and over 200 connections in the Deer Lodge Park service area with new water connections averaging less than one percent per year for the period 1995 through 2009. In order to help maintain this rate of new water connections, in June 2006 the District adopted Ordinance 65 to limit the number of new water connection permits to five per month. This was in response to State Water Resources Control Board Order WR 2006-0001 (described further below). The chart below taken from the FY 2008-09 audit shows the number of connections since 2000.

	Arrowhead Woods				Deer Lodge Park (DLP)			
Fiscal Year	New Water Connections	Water Connections (1)		% Increase	New DLP Connections	DLP Connections		% Increase
2000	88	7,294		1.22%	1	164		0.61%
2001	81	7,375		1.11%	0	164		0.00%
2002	84	7,459		1.14%	2	166		1.22%
2003	67	7,526		0.90%	0	166		0.00%
2004	64	7,590		0.85%	1	167		0.60%
2005	65	7,655		0.86%	1	168		0.60%
2006	171	7,826		2.23%	7	175		4.17%
2007	34	7,860		0.43%	7	182		4.00%
2008	43	8,289	(2)	0.55%	2	209	(2)	1.10%
2009	24	8,187	(4)	-5.89%	0	209		-11.96%
Average	72				2			

After reaching a peak water usage in 2002, water use per customer has declined with a sharp drop in 2008 (as shown on the table below). After reviewing the District's water conservation programs this past year, the Board adopted Ordinance 69 to enable the District to restrict certain types of non-essential water uses and prioritize local water supplies for essential uses. The effect of this new ordinance should reduce average water use even further. According to the FY 2008-09 budget, the three largest rate payers were Lake Arrowhead County Club (210.31 acre-

feet), Lake Arrowhead Resort (25.83 acre-feet), and Rim of the World Unified School District (28.04 acre-feet).

Calendar Year	2000	2001	2002	2003	2004	2005	2006	2007	2008
Avg. acre-foot per customer	0.29	0.29	0.30	0.25	0.25	0.23	0.23	0.24	0.18

source: Lake Arrowhead CSD FY 2008-09 Financial Statements

Wastewater

The sewer system consists of approximately 200 miles of sewer pipelines and 21 lift stations that convey wastewater to one of the two wastewater treatment plants. The District currently has nearly 10,600 wastewater connections in its service area. Shown on the chart below is the connection activity since 2000. According to the FY 2008-09 Financial Statements, the three largest sewer customers were Lake Arrowhead Resort ($54,203), Lake Arrowhead Village ($50,450), and Rim of the World Unified School District ($47,735).

Wastewater				
Fiscal Year	New Wastewater Connections	Wastewater Connections		% Increase
2000	90	10,088		0.90%
2001	103	10,191		1.02%
2002	84	10,275		0.82%
2003	68	10,343		0.66%
2004	64	10,407		0.62%
2005	67	10,474		0.64%
2006	105	10,579		1.00%
2007	106	10,695	(3)	1.10%
2008	46	10,741		0.43%
2009	39	10,592	(4)	-1.39%
Average	77			

The two treatment plants have a combined permitted treatment capacity for dry weather average daily flow of 3.75 mgd. Partially treated effluent is conveyed from the Willow Creek treatment plant to the Grass Valley treatment plant for final treatment. Treated wastewater is then conveyed through the District's 10-mile outfall pipeline where the water is used for crop irrigation and also to infiltrate effluent through percolation ponds on a 350 acre facility owned by the District in Hesperia, approximately two miles north of the Mojave Forks Dam.

LACSD is required to send effluent to the Mojave Basin as a result of *City of Barstow et al. v. City of Adelanto et. al.* Superior Court Case No. 208568, Riverside County, CA (1990). The LACSD water/wastewater service area is not within the Mojave Basin adjudication. Currently all water transported to the Hesperia disposal site is percolated into the Mojave Basin. LACSD has delivered reclaimed wastewater to the Mojave Basin Area for disposal in the following amounts[3]:

[3] Mojave Basin Watermaster. Watermaster reports for Water Years 2002-03 through 2008-09.

Water Year	Acre-feet
2002-03	1,740
2003-04	1,498
2004-05	2,451
2005-06	1,504
2006-07	1,677
2007-08	1,277
2008-09	1,432

The District's Wastewater system is operated under a set of Waste Discharge Requirements (WDR) as part of Regional Board Order No. R6V-2009-0037 issued June 10, 2009 by the Regional Water Quality Control Board. The District developed and implemented a Sewer System Management Plan to improve its spill prevention and prevention programs as required by the WDR. The primary goal of the program is to eliminate all spills from the Collection System. In an effort to bring the District in to compliance, the District is in the process of upgrading and expanding its Grass Valley Wastewater Treatment Plant to meet California Department of Public Health Title 22 tertiary standards for wastewater treatment and obtaining an emergency discharge permit so that in extreme wet weather events the District may discharge flows that exceed the capacity of the treatment and disposal system to Grass Valley Creek.

Reclamation

Prior to 2004, reclaimed (recycled) water was not permitted by the Lahontan Regional Water Quality Control Board in the Mountain region. In April 2004, the District's request for an amendment to the State Water Quality Control Board Lahontan Region Basin Plan to allow the use of reclaimed water for outdoor irrigation at elevations above 3,200 feet was approved. Phase 1 was completed in the summer of 2010. A portion of funding for the project is through an Environmental Protection Agency (EPA) grant.

The District is in the process of designing and constructing facilities to deliver reclaimed water to large irrigation users. The first phase of the Recycled Water Project is complete and has delivered water for irrigation of the Lake Arrowhead County Club golf course and immediate surrounding areas such as Grass Valley Lake Park.

Las Flores Ranch Corporation and Mojave River County Water District v. Lake Arrowhead Development Company

The Mojave River County Water District (Mojave River CWD) obtained a Judgment in 1966 to limit the amount of water that could be taken by entities upstream of the Mojave River CWD. In 1995, LAFCO approved the dissolution of the Mojave River CWD (LAFCO 2795), and as a condition of the dissolution the Mojave Water Agency (MWA) succeeded to the responsibilities of the Mojave River CWD related to the judgment. Specifically, MWA intervened in the lawsuit *Las Flores Ranch Corporation v. Lake Arrowhead Development Company.* By intervening in the case, MWA "shall monitor compliance with the Judgment". The monitoring effort involves determination of minimum water flows through a metered facility from Grass Valley Lake into Grass Valley Creek, a tributary to the Mojave River, as prescribed by the Judgment.

The actual responsibility to monitor and report the data resides with the Arrowhead Lake Association, and the Arrowhead Lake Association uses data collected from the LACSD for monitoring and reporting. MWA's role is to maintain water transfer records of discharge into Grass Valley Creek and to maintain water transfer records from Grass Valley Creek and Grass

Valley Lake into Lake Arrowhead. MWA is fulfilling its obligation by maintaining the discharge and transfer records. To ensure consistent and accurate reporting and to share costs related to the operation of Lake Arrowhead, Arrowhead Lake Association and Lake Arrowhead CSD have entering into a memorandum of understanding to address a comprehensive monitoring program at Lake Arrowhead and the division of costs. A copy of the updated agreement, dated November 2007, is available through LACSD, MWA, or LAFCO.

3. Financial ability of agencies to provide services:

The Commission has reviewed the District's budgets, audits, 2008 Financial Master Plan, and State Controller reports for special districts.

Funds and General Operations

In reviewing the financial documents, the District has been operating with an annual positive change in net assets since at least FY 2005-06, as shown on the figure below. For FY 2007-08 and FY 2008-09, net assets increased by $5.76 million and $8.98 million, respectively. As of June 30, 2009, LACSD had $74.80 million in net assets. Not including capital assets value and debt, the District had roughly $15.67 million in restricted and unrestricted net assets. Of this amount $11.59 million is unrestricted.

	Fiscal Year				
	2005	2006	2007	2008	2009
Business-type activities:					
Invested in capital assets, net of related debt	28,277,098	30,227,499	34,945,404	42,757,347	59,231,500
Restricted	8,786,694	10,457,876	11,280,883	10,333,134	3,971,746
Unrestricted	13,104,460	13,024,649	13,835,208	12,732,250	11,594,330
Total business-type activities net assets	50,168,252	53,710,024	60,061,495	65,822,731	74,797,576

source: FY 2008-09 financial statements

The accounts of LACSD are organized into three enterprise funds considered as separate accounting functions. Therefore, general administrative costs, operations, fees paid, and corresponding expenses are separated as follows:

- Water Enterprise – Accounts for the retail water operations confined to the water service area. In the past audited fiscal year, net assets increased by $7.4 million (23%) due to investment in recycled water projects, automatic meter reading upgrade, and water pipeline installation. In 2004, LACSD implemented a new Supplemental Water Supply Fee in order to diversify the district's water supply to eliminate reliance on the lake as the sole source of water supply.

- Wastewater Enterprise – Accounts for the wastewater operations throughout the district. For FY 2008-09, net assets increased by $1.7 million (5%) due to investment in pipeline rehabilitation and improvements made to Lift Stations 9 and 10.

- Deer Lodge Park Enterprise – Accounts for the purchase of water or pumping activities of the Deer Lodge Park 94-1 assessment district. For FY 2008-09, net assets decreased by

$163,000 (8%) due to a write-off of $166,000 of the assessment receivable as uncollectible.

Revenues

Revenues are derived primarily from 1) charges for services, 2) share of the one percent general levy property tax, 3) supplemental water supply fee, 4) interest, and 5) grant income

1. *Charges for Services*

The main source of revenue income for the District is from charges for water and sewer services. Rates for residential water service include a fixed monthly charge for water service based on meter size applicable to each property, even if unoccupied, and a consumption charge for water service based on a tiered rate. Both water and wastewater customers are billed on a monthly basis. However, wastewater only customers are charged a fixed fee equivalent to $40.16 per month billed on the annual property tax bill.

During fiscal year 2008-09, the District finalized a comprehensive Financial Master Plan to ensure the continued financial stability of the District. The water and wastewater rates have been restructured based on the Financial Master Plan and the District moved from bi-monthly billing to monthly billing. The rate structure adjusts fixed charges and volume charges so that the net effect more fairly allocates costs to those customers that are high volume users and enhance the positive economic signal to users that conserve. A three percent rate increase was approved with the adoption of the FY 2009-10 Budget, effective January 1, 2010.

2. *Share of One Percent General Levy*

LACSD receives a share of the one percent general ad valorem tax levy. The receipt of a share of the general levy is to the District as a whole and it has chosen to restrict these revenues to its wastewater activities. When the LACSD assumed responsibility for the wastewater activities of the former Lake Arrowhead Sanitation District, the Sanitation District's share of the general levy was transferred to LACSD (LAFCO 2186).

3. *Supplemental Water Supply Fee*

The Supplemental Water Supply Fee was put in place in 2004 to collect fees to: 1) pay for the cost of importing State Water Project water; and 2) pay for the cost of permanent water supply projects such as groundwater wells, recycled water for outdoor irrigation, and additional imported water. The Supplemental Water Supply fee is collected through the County of San Bernardino Property Tax Rolls. It is not part of a customer's regular monthly water bill. The fee consists of a fixed annual charge for all water connections and a variable water charge based on previous calendar year water usage. The fixed annual charge increases each year by two percent and is $242.13 for FY 2010-11. Parcels already paying a CLAWA fee and those without a meter are exempt from the supplemental fee. The fee was established for 15 years and FY 2010-11 is the sixth year of the fee. The District Board of Directors has taken action to restrict use of the Supplemental Water Fee Funds by way of Ordinance 61.

Through December 31, 2009, the Supplemental Water Fees have generated $20.4 million along with $7.1 million in funding provided by the State Revolving Fund grant and loan proceeds. The use of the funds totals $23.0 million comprised of $4.4 million in water purchases from CLAWA and $18.6 million in capital projects. The largest of the capital projects is Phase 1 of the Recycled Water project at $12.3 million through December 31, 2009.

4. *Interest*

The District has approximately $40 million in its reserve accounts which generates considerable interest. However, interest earnings have dropped significantly due to market conditions, which also affect the three enterprise funds.

5. *Grant Income*

The District actively pursues grant funding for it projects. Over the last five audited fiscal years, it has received over $3.7 million in grant funding to include:

- $431,000 from the Environmental Protection Agency (EPA) for the District's recycled water program. The District has received the total grant amount and applied it towards the engineering services during construction and other professional services related to the Recycled Water Phase I project.

- $250,000 from the United States Bureau of Reclamation for a portion of the Integrated Water Regional Plan (IWRP) related to groundwater management.

- $492,000 from the Bureau of Reclamation portion of the House Energy and Water Appropriations Bill to develop the IWRP. The District and the Bureau worked together to complete the IWRP Final Report in 2007 and the next steps are to begin implementation including surface and groundwater management activities.

- $208,000 from the Bureau of Reclamation toward an Automatic Meter Reading conservation program.

- The District has secured another appropriation totaling $1,000,000 in the Federal Fiscal Year 2010 Bureau of Reclamation portion of the House Energy and Water Appropriations Bill. The funds are to be used for a reservoir hydrodynamic study ($139,792), USGS Precipitation and Stream Gauge Stations ($167,625), and Water Supply-Renewable Energy Appraisal Study ($560,038). The District was unable to fully utilize the $1 million and the agreement with the Bureau is for $867,455.

Expenditures

As shown below, for FY 2010-11 personnel, materials and supplies, and utilities and waste disposal comprise the majority of the major expenditure categories. The percentage representation below generally is the same for the past few years, with the exception of water purchases increasing in cost for some years.

Activity	Expenditure	Percentage
Personnel	$5,853,562	58%
Materials & Supplies	$1,240,420	12%
Utilities & Waste Disposal	$1,061,050	11%
Professional & Other Services	$807,560	8%
General Liability Insurance	$300,000	3%
Water Purchases	$253,000	3%
Maintenance, Contracts & Permits	$217,760	2%
Training & Travel	$186,860	2%
Rebate Programs	$150,000	1%
TOTAL	**$10,070,212**	**100%**

Based on recommendations in the Financial Master Plan adopted on September 9, 2008, the District is pursuing debt financing and has taken advantage of low costs loans and grants through the State Revolving Fund. The major addition to capital assets this year was the completion of the Automatic Meter Reading project, water pipeline replacement and sewer pipeline rehabilitation along with lift station upgrades and equipment purchases.

In November 2009, the District sold $22 million of Certificates of Participation. Approximately $6 million was to pay-off the outstanding balance of the 1999A debt with a net present savings of over $300,000. Approximately $15 million was new money for capital improvement projects in water (25%) and wastewater (75%). The capital improvement projects will also be partially funded with existing District reserves, according to LACSD.

Capital improvement activity focuses heavily on recycled water projects. These projects include replacing aging infrastructure and will provide efficiencies to both the water and wastewater systems. Funding for these projects are from the 2009 certificates of participation proceeds, district reserves, and state and federal grants. The number of projects is still robust, but several significant projects, including the recycled water Grass Valley Wastewater Treatment Plant upgrade, recycled water transmission line, and conversion of the Lake Arrowhead Country Club golf course for recycled water use were completed in the prior budget year.

Long-Term Debt

Long-term liabilities are $17.8 million as of June 30, 2009. Of this amount, the District had $15.3 million in outstanding long-term debt, compared to $14.6 million in fiscal year 2007-2008, a net increase of $2.6 million. On September 4, 2007 the State Water Board adopted the 2007-08 State Revolving Fund (SRF) Loan Program which included the District's Recycled Water Phase 1 Project. The total amount approved for the District's SRF loan is $6,220,000 that will be disbursed to the District as reimbursement requests based upon project expenditures are submitted to the State Water Board. The loan has a repayment period of twenty years, with the first repayment due one year after completion of construction, with an interest rate of 2.5%. As of June 30, 2009 the total amount drawn down of the SRF loan was $2,895,655.

The outstanding debt at June 30, 2009 and 2008 is shown in the following figure.

Table D-1
LACSD Outstanding Long-Term Debt
(in millions of dollars)

	Water	Wastewater	Total 2009	Total 2008	Total % Change 2008-2009
2002 Revenue Refunding Bonds	$ -	$ 6.1	$ 6.1	$ 7.5	(18.7%)
1993 Revenue Refunding Bonds	-	-	-	-	0.0%
1999 CSCDA Revenue Bonds	2.8	3.5	6.3	7.1	(11.3%)
State Revolving Fund	2.9	-	2.9	-	100.0%
	$ 5.7	$ 9.6	$ 15.3	$ 14.6	4.8%

In addition, the Deer Lodge Park fund owes the Water fund $183,855 as of June 30, 2009 for an advance to pay for legal fees. The amount is being paid off over a 20-year period with an interest rate of five percent.

Additional Information

Regular Audits

Government Code Section 26909 requires all districts to provide for regular audits; LACSD conducts annual audits and meets this requirement. Section 26909 also requires districts to file a copy of the audit with the State Controller and county auditor within 12 months of the end of the fiscal year. According to records from the County Auditor, the last audit received was for FY 2008-09.

Appropriations (GANN) Limit

Under Article XIIIB of the California Constitution (the Gann Spending Limitation Initiative), LACSD is subject to the Gann limit. Therefore, an agency is restricted as to the amount of annual expenditures from the proceeds of taxes, and if proceeds of taxes exceed allowed appropriations, the excess must either be refunded to the State Controller or returned to the taxpayers through revised tax rates, revised fee schedules of other refund agreements. As a part of the annual budget process, the District adopted by resolution the appropriation limit for the wastewater function for FY 2010-11. A review of the financial statements for the fiscal years ended June 30, 2008 and 2009 show that proceeds of taxes did not exceed appropriations and the wastewater expenditures did not exceed its adopted appropriation limit.

Awards

The California Society of Municipal Finance Officers awarded a Certificate for an Award for Outstanding Financial Reporting to LACSD for its Comprehensive Annual Financial Report for the fiscal year ended June 30, 2008. This was the eighth year that the District has achieved this award.

Pension Obligations

A review of the most recent audited financial statements indicates that LACSD has a zero net pension obligation. In addition, LACSD does not pay for post-employment benefits.

4. Status of, and opportunities for, shared facilities:

As discussed above, LACSD has entered into short term agreements with San Bernardino Valley Municipal Water District ("Muni") and with the Crestline-Lake Arrowhead Water Agency ("CLAWA") for the purchase of water from Muni, then treatment and transportation of that water through CLAWA's transmission system (as capacity may be available in the Agency's system during periods of off-peak demands) for delivery of that treated water into the LACSD's system for its use in lieu of water from Lake Arrowhead. All of the water supplied by CLAWA is treated to the California Department of Public Health standards at the agency's Silverwood Water Treatment Plant.

5. Accountability for community service needs, including governmental structure and operational efficiencies:

Local Government Structure and Community Service Needs

LACSD is an independent special district governed by a five-member board of directors. Members are either elected by the electorate at the November consolidated election in odd numbered years or are appointed in-lieu of election by the County Board of Supervisors to four-year staggered terms. The most recent selection round in November 2009 produced three appointed members. The current board, positions, and terms of office are shown below:

Board Member	Title	Term	Selection
Geoffrey Goss	President	2013	Appointed in Lieu of Election
David Ben-Hur	Vice President	2011	Elected
Joyce Barkley	Director	2013	Appointed in Lieu of Election
Glenn Goodwin	Director	2013	Appointed in Lieu of Election
Ralph Wagner	Director	2011	Elected

Regular Board meetings occur on the second and fourth Tuesday of each month at 6:30 p.m. at the Willow Creek Board Room in Lake Arrowhead. Notice of each Board meeting is posted for public review and on the agency website at least 72 hours in advance and is also mailed to anyone who may have requested notice in writing. LACSD's office is located in Lake Arrowhead and is open Monday through Friday 7:30 a.m. to 5:00 p.m.

Operational Efficiency

Operational efficiencies are realized through several joint agency practices, for example:

- The District participates in a joint venture with forty-thee other participants in California Sanitation Risk Management Authority ("CSRMA") for workers' compensation and forty members pooled liability insurance. CSRMA has a self-insured retention of $750,000 per occurrence for workers' compensation and pooled liability, workers' compensation docs not have a deductable and pooled liability has a $50,000 deductible.

- Beginning March 1, 2003, the District contributes to the California Public Employees Retirement System ("PERS"), a cost-sharing multiple-employer public employee defined benefit pension plan. PERS provides retirement and disability benefits, annual cost-of

living adjustments, and death benefits to plan members and beneficiaries. PERS acts as a common investments and administrative agent for participating public entities with the State of California. On March 11, 2009 the remaining 16 participants of the 401(a) pension plan rolled over their investment to PERS giving the District 100% participation in PERS.

- The County of San Bernardino has transferred approximately 12.88 acres previously purchased by County Service Area 70 Zone D-1 to LACSD. LACSD plans to use this site for a new district office and maintenance yard.

Government Structure Options

There are two types of government structure options:

1. Areas served by the agency outside its boundaries through "out-of-agency" service contracts;

2. Other potential government structure changes such as consolidations, reorganizations, dissolutions, etc.

Out-of-Agency Service Agreements:

CLAWA Law and its contract with the State Department of Water Resources prohibit CLAWA from delivering any portion of its imported water supply for use outside of its boundaries. However, as noted throughout this report, there is a three-party agreement between CLAWA, San Bernardino Valley Municipal Water District ("Muni"), and LACSD for the purchase of water from Muni, treatment and transportation of that water through the CLAWA's transmission system (as capacity may be available in CLAWA's system during periods of off-peak demands) for delivery of that treated water into the LACSD's system for its use in lieu of water from Lake Arrowhead.

Government Structure Change Options:

While the discussion of some government structure options may be theoretical, a service review should address possible options.

- Annexation of surrounding territory. LACSD, landowners, or registered voters could submit an application to expand the sphere of influence of LACSD and annex surrounding territory. However, much of the surrounding lands are either served by another district or are public lands not requiring municipal level services through LACSD or any other public agency. Further, the District does not have any specific policies related to annexation but it has stated its past practice has been to refuse to annex new territory to the primary water service area. However, it has assumed the obligation for water service under a separate system.

- Annexation of district-owned land in Hesperia. LACSD desires to bring into its sphere of influence and annex ten parcels in the City of Hesperia. The property is owned by LACSD which it uses for effluent disposal and agricultural production. As a cost savings measure, if LACSD were to annex these parcels and continue its municipal use, then it

would benefit from tax exempt status for the parcels and would not be subject to paying the ad valorem property tax.

- Assumption of streetlighting and road maintenance responsibility as well as other municipal level services for the community. LACSD overlays CSA 59 and CSA 69 (roads) and a portion of CSA 54 (streetlights). As a multi-function, independent special district, LACSD has the statutory authority to provide streetlighting and road maintenance services (although activation of such service is subject to LAFCO authorization). In this scenario, LACSD could assume responsibility for providing the services within its boundaries.

  Such a change is in concert with the Commission's community service ideology, there would be a single agency providing the full range of municipal services within a community (along with a transfer of the property tax share of each respective agency) and reduction of multiple agencies providing the same service. The Commission bases this possibility upon the following:

  - The Commission approved the formation of the LACSD with the condition that the district continue to explore possibilities of adding additional services at the earliest possible time,

  - Legislature's intent in LAFCO Law and Community Services District Law.

    - The preamble to LAFCO Law reads that while the Legislature recognizes the critical role of many limited purpose agencies, especially in rural areas, it finds and declares that a single multipurpose governmental agency accountable for community service needs and financial resources may be the best mechanism for establishing community service priorities.

    - Government Code Section 61001(b) states:

      The Legislature finds and declares that for many communities, community services districts may be any of the following:

      (1) A permanent form of governance that can provide locally adequate levels of public facilities and services
      (2) An effective form of governance for combining two or more special districts that serve overlapping or adjacent territory into a multifunction special district.
      (3) A form of governance as the community approaches cityhood.
      (4) A transition form of governance as the community approaches cityhood.

      The San Bernardino LAFCO has utilized CSDs as a service mechanism to nurture communities and protect them from intrusion by other service providers for a future incorporated city.

    - Further, the preamble to Community Services District Law states that the intent of the Legislature for CSD Law is to encourage LAFCOs to use their

service reviews, spheres of influence, and boundary powers, where feasible and appropriate, to combine special districts that serve overlapping or adjacent territory into multifunction community services districts.

LACSD was requested to provide its response to this option. This option was discussed by the LACSD board at it September 14 meeting and was met with amusement. The District's written response to LAFCO states that the directors considered the request and determined that because the street lighting and road maintenance district were so small, it would not be economical for LACSD to attempt to operate the districts.

The Commission returns to the Legislature's intent in LAFCO Law and Community Services District Law in that a single multi-function agency may be the best mechanism to coordinate and provide service within a community. It is evident that the current situation results in multiple governing bodies, administration, overhead, and financial reporting. It is also apparent that the District currently provides for the receipt of service by contract (as snow removal is accomplished) and through direct payment to Southern California Edison for services.

- Assumption of CSA 70 Zone D-1's dam maintenance (flood control) and park services by Lake Arrowhead Community Services District (LAFCO 3144). This proposal was continued from the July hearing to this month's agenda at the a request of the Lake Arrowhead CSD. The proposal was to authorize activation of the District's latent flood control and park and recreation services within its boundaries. The rationale for this request was the future intent to assume responsibility for providing those services currently a function of CSA 70 Zone D-1 along with a transfer of all its assets, revenues, and liabilities. Since that time, LACSD has withdrawn its application. However, as outlined above the transfer of this service obligation remains a long-term option given the primary role of the agency to protect the viability of Lake Arrowhead, the primary source of water for consumption within the District's jurisdiction. However, if the District is not interested in the assumption of regional services, as evidenced by its response on road and streetlighting, the transfer of these services remains problematic. The Commission's position remains that for maintenance of the dam, such an action could reduce the layers of government in the area and provide for local control of the dam and Papoose Lake.

- Assumption of public retail water service within LACSD boundaries. There are three public agencies that provide water within LACSD's boundaries but outside of its water service area. These scenarios would reduce multiple public agencies overlaying the same area that provide the same service. Since the service areas of these agencies are already within the boundaries of LACSD, these scenarios would not require LAFCO approval and would be subject to negotiation between the appropriate agencies or a vote of the electorate.

    - *CSA 70 Zone CG.* In this scenario, LACSD would assume responsibility for County Service Area 70 Zone CG's (Zone CG) water service and would succeed to Zone CG's water system, assets, and liabilities.

    - *Crestline-Lake Arrowhead Water Agency Improvement Districts.* At the time that CLAWA created Improvement Districts A, B, C, and D there was no other public water agency available to provide the service. However, in 1983, LACSD was

expanded to include the boundaries of the Lake Arrowhead Sanitation District and assumed that agency's services; the majority of CLAWA's improvement districts are within LACSD. LACSD currently provides water service to the Arrowhead Woods area (its original service area) and the territory within Deer Lodge Park. LACSD could assume the retail responsibility for Improvement Districts A and C, the majority of Improvement District B and the developed portions of Improvement District D.

- *City of Big Bear Lake Department of Water and Power.* The City of Big Bear Lake Department of Water and Power succeeded to the water service territory previously assigned the Southern California Water Company – Big Bear District upon its acquisition by the City of Big Bear Lake. As a condition of the City's acquisition through condemnation, it was required to assume service responsibility for all of Southern California Water Company's service area in the mountains – which included the Rimforest portion in the Lake Arrowhead community. In 1995, LAFCO granted the City of Big Bear Lake an exemption from the provisions of Government Code Section 56133 for the provision of water service within the State Public Utilities Commission assigned certificated service area. In 2004, the Commission authorized the expansion of the Rimforest Service to include the Mountain Pioneer Mutual Water Company due to the devastating effects of the Old Fire on the system. The question has been raised of transferring this service obligation to the LACSD due to its proximity (City of Big Bear Lake DWP is more than 30 miles away). LACSD has indicated its interest in assuming service responsibility for this area as well as succeed to the system's assets; however, no official response has been received from the City of Big Bear Lake DWP.

- CLAWA annexation of Arrowhead Woods. While CLAWA is willing to continue cooperation with LACSD and assist in delivering supplemental water obtained by alternative means, CLAWA's Board strongly opposes annexation of the Arrowhead Woods area. CLAWA staff has provided two main reasons for the opposition to annexation of the Arrowhead Woods area. First, imported water supply may not be sufficient to satisfy existing and anticipated demand for supplemental water and the agency would not be comfortable adding demand with no additional supplemental supply. Second, the additional population would alter the board representation with the Lake Arrowhead community possibly comprising two of the five board seats.

  Should Arrowhead Woods ever be annexed into CLAWA, the Commission's analysis indicates that board divisions would need to be realigned to allow for proportional representation. All levels of public agencies are evolving entities and boundary and representation modifications are a common occurrence.

  A 2003 study funded by CLAWA indicates that if Arrowhead Woods were to be annexed to the agency, the annexation fee to be paid to CLAWA would be approximately $39.7 million. This figure was based upon CLAWA's rules and regulations, which state that an annexation fee shall equal the sum of back property taxes and back standby charges. With roughly 9,500 parcels[4] composing the Arrowhead Woods area, the average annexation fee to CLAWA would be roughly $4,200. Additionally, this figure was derived

[4] The 2003 study funded by CLAWA identifies that roughly 9,500 parcels are within the Arrowhead Woods exclusion area. A parcel count provided by the County of San Bernardino Information Services Department in May 2010 identifies that there are 9,852 parcels within this area.

in 2003 and would increase each year as property taxes and standby charges are levied. However, according to CLAWA's FY 2008-09 Financial Statements, CLAWA's future commitment for State Water Project costs over the years 2009 to 2035 is estimated at $49.9 million. For illustrative purposes, by simply adjusting the 2003 estimated $39.7 million annexation fee for inflation, the Arrowhead Woods area would be charged $47.0 million in 2010. Therefore, the general statement can be made that annexation of Arrowhead Woods to CLAWA along with the annexation fees would roughly equal CLAWA's commitment for State Water Project costs through 2035 and remove that obligation from CLAWA's current residents and landowners. If such annexation were to be proposed, an improvement district could be formed to isolate the Arrowhead Woods area, much like Improvement Districts A, B, C and D, to be responsible for the future State Water Project costs. This scenario would afford the Arrowhead Woods with accessibility to supplemental water and substantially reduce or even eliminate the future State Water Project costs that those currently within CLAWA's boundaries pay. No opinion regarding this possibility has been received from CLAWA, LACSD, or those representing the Arrowhead Woods area. However, LACSD states that due to political factions, this option is not likely at this time.

- Consolidation of all public water agencies and/or service areas. Another scenario would be to consolidate all of the public water agencies providing retail water service within CLAWA's boundaries. These agencies include Arrowbear Park County Water District, County Service Area 70 Zone CG, CLAWA, Crestline Village Water District, LACSD, Running Springs Water District, and the Rim Forest portion of the City of Big Bear Lake Department of Water and Power. This option could reduce duplication of administrative efforts and provide the opportunity for economies of scale. Further, it would provide a single voice for this part of the mountain region regarding water issues. This option could also alleviate the need for short-term solutions for water delivery. This is a viable option, and appears more practical for the Crest Forest and Lake Arrowhead communities. However the details of a possible consolidation would need to consider the other services provided by the agencies and if annexation of additional territory would be included.

- Maintenance of the status quo. No interest has been expressed from LACSD, landowners, or residents in exploring the options above.

Maintenance of the existing organizational structure would maintain the delivery of retail water and sewer within the respective service areas with no additional services provided. However, the Commission is recommending sphere expansions to include district-owned land in Hesperia and to encompass the Lake Arrowhead community, as defined by the Commission. In addition, the Commission determines that the responsibility for maintenance and operation of the Rimforest water system should transfer from the City of Big Bear Lake Department of Water Power to the LACSD. Further consideration of this determination will be included in the Bear Valley Community Service Review.

WHEREAS, the following determinations are made in conformance with Government Code Section 56425 and local Commission policy:

1. Present and Planned Uses:

Land uses within the district boundaries consist of residential with limited commercial and institutional uses to support regional retail requirements. There is no agricultural use within the

District. Open space areas are either not yet developed land (residential), recreational (golf course) or commercial related (conference centers). The three lakes are designated as open space, with one publicly owned (Papoose Lake).

2. **Present and Probable Need for Public Facilities and Services:**

Due to the high housing density (3 to 4 dwellings units per acre), hard rock soil conditions, and proximity to lake waters present an on going need for water and wastewater services. The population density creates demands that far exceed the ability of local natural water resources to adequately and reliably satisfy. The regulatory reduction in the entitlement to Lake Arrowhead water will require the District to identify and secure an alternative reliable source of imported water to meet existing and future demands.

The present and probable need for supplemental water service in the Arrowhead Woods area (7.4 square miles) has been addressed through the three-party agreement between Crestline-Lake Arrowhead Water Agency ("CLAWA"), San Bernardino Valley Municipal Water District ("Muni"), and the LACSD for the purchase of water from Muni, then treatment and transportation of that water through the CLAWA's transmission system (as capacity may be available in CLAWA's system during periods of off-peak demands) for delivery of that treated water into the LACSD's system for its use in lieu of water from Lake Arrowhead. However, the three-party agreement is a short-term solution with the contract expiring in 2020. Further, there are no known plans on providing a long-range and comprehensive solution to the water challenges in the mountain area after 2020.

3. **Present Capacity of Public Facilities and Adequacy of Public Services**

The present capacity of the facilities is adequate for the District's services. LACSD states that within the next seven years alternative water supply sources must be identified and secured for long-term water supply reliability.

4. **Social and Economic Communities of Interest:**

The social communities of interests are the Rim of World Unified School District, Arrowhead Woods development, and the surrounding communities. The economic communities of interest are Lake Arrowhead, Lake Arrowhead Village, and businesses along the highways.

5. **Additional Determinations**

- As required by State Law notice of the hearing was provided through publication in a newspaper of general circulation, *The Sun*. Individual notice was not provided as allowed under Government Code Section 56157 as such mailing would include more than 1,000 individual notices. As outlined in Commission Policy #27, in-lieu of individual notice the notice of hearing publication was provided through an eighth page legal ad.

- As required by State law, individual notification was provided to affected and interested agencies, County departments, and those agencies and individuals requesting mailed notice.

- Comments from landowners/registered voters and any affected agency have been reviewed and considered by the Commission in making its determinations.

WHEREAS, pursuant to the provisions of Government Code Section 56425(i) the range of services provided by the Lake Arrowhead Community Services District shall be limited to the following:

FUNCTIONS	SERVICES
Water	Retail, domestic, operation of water, conservation, reclaimed water for irrigation purposes
Sewer	Collection, transportation, treatment, reclamation, disposal

WHEREAS, having reviewed and considered the findings as outlined above, the Commission determines to expand the Lake Arrowhead Community Services District's sphere of influence by approximately 1,140.3+/- acres and affirms the balance of its existing sphere of influence.

NOW, THEREFORE, BE IT RESOLVED by the Local Agency Formation Commission of the County of San Bernardino, State of California, that this Commission shall consider this to be the sphere of influence for the Lake Arrowhead Community Services District; it being fully understood that establishment of such a sphere of influence is a policy declaration of this Commission based on existing facts and circumstances which, although not readily changed, may be subject to review and change in the event a future significant change of circumstances so warrants;

BE IT FURTHER RESOLVED that the Local Agency Formation Commission of the County of San Bernardino, State of California, does hereby determine that the Lake Arrowhead Community Services District shall indemnify, defend, and hold harmless the Local Agency Formation Commission of the County of San Bernardino from any legal expense, legal action, or judgment arising out of the Commission's affirmation of the sphere of influence, including any reimbursement of legal fees and costs incurred by the Commission.

THIS ACTION APPROVED AND ADOPTED by the Local Agency Formation Commission of the County of San Bernardino by the following vote:

AYES:	**COMMISSIONERS:**	**Bagley, Derry, Coleman, Curatalo, McCallon**
NOES:	**COMMISSIONERS:**	**None**
ABSENT:	**COMMISSIONERS:**	**Cox, Mitzelfelt**

****

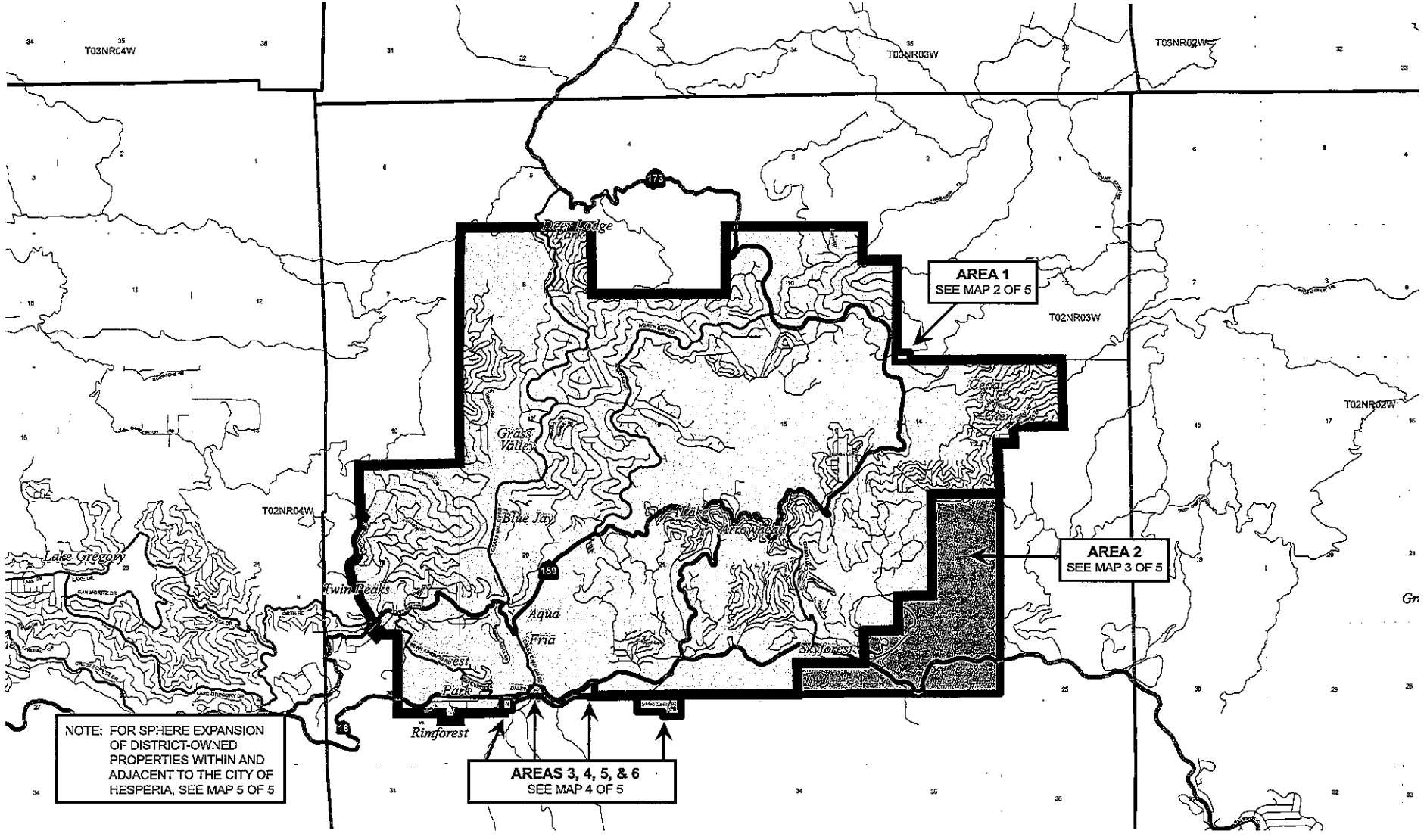
STATE OF CALIFORNIA)
) **ss.**
COUNTY OF SAN BERNARDINO)

I, KATHLEEN ROLLINGS-McDONALD, Executive Officer of the Local Agency Formation Commission of the County of San Bernardino, California, do hereby certify this record to be a full, true, and correct copy of the action taken by said Commission, by vote of the members

present, as the same appears in the Official Minutes of said Commission at its meeting of December 8, 2010

DATED: December 9, 2010

KATHLEEN ROLLINGS-McDONALD
Executive Officer



LAFCO 3110 - SERVICE REVIEW AND SPHERE OF INFLUENCE UPDATE FOR LAKE ARROWHEAD COMMUNITY SERVICES DISTRICT

LACSD
LACSD Existing Sphere
Sphere Expansion Areas

Exhibit A

Exhibit A

LAFCO 3110 - SPHERE OF INFLUENCE AMENDMENT (EXPANSIONS) FOR
LAKE ARROWHEAD COMMUNITY SERVICES DISTRICT

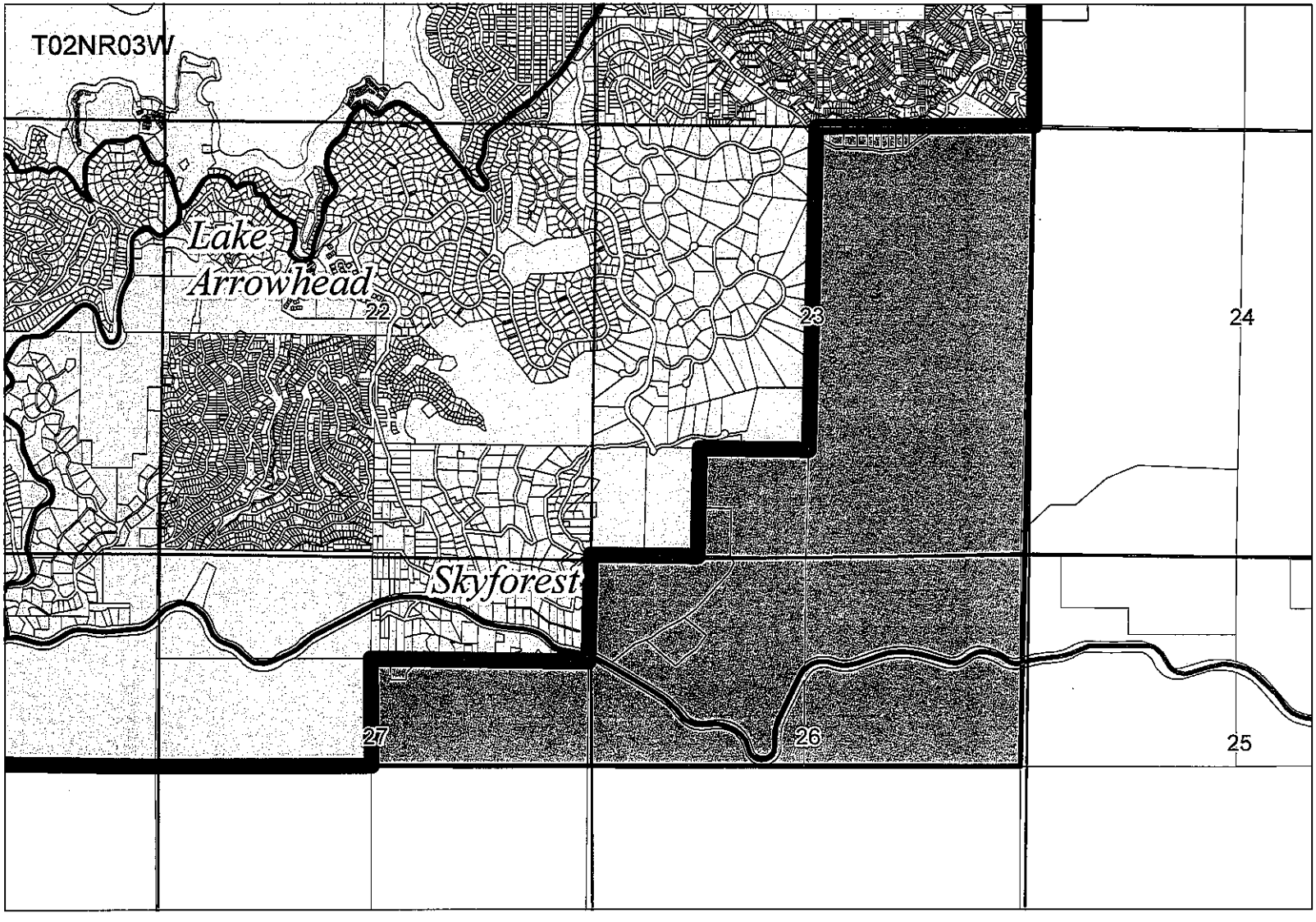
AREA 1 - Sphere Expansion for Lake Arrowhead Community Services District

Portion of Section 11, Township 2 North, Range 3 West, San Bernardino Meridian, containing 1.3 acres, more or less.

Sphere Expansion Existing Sphere District Boundary

Exhibit A

Exhibit A



LAFCO 3110 - SPHERE OF INFLUENCE AMENDMENT (EXPANSIONS) FOR
LAKE ARROWHEAD COMMUNITY SERVICES DISTRICT

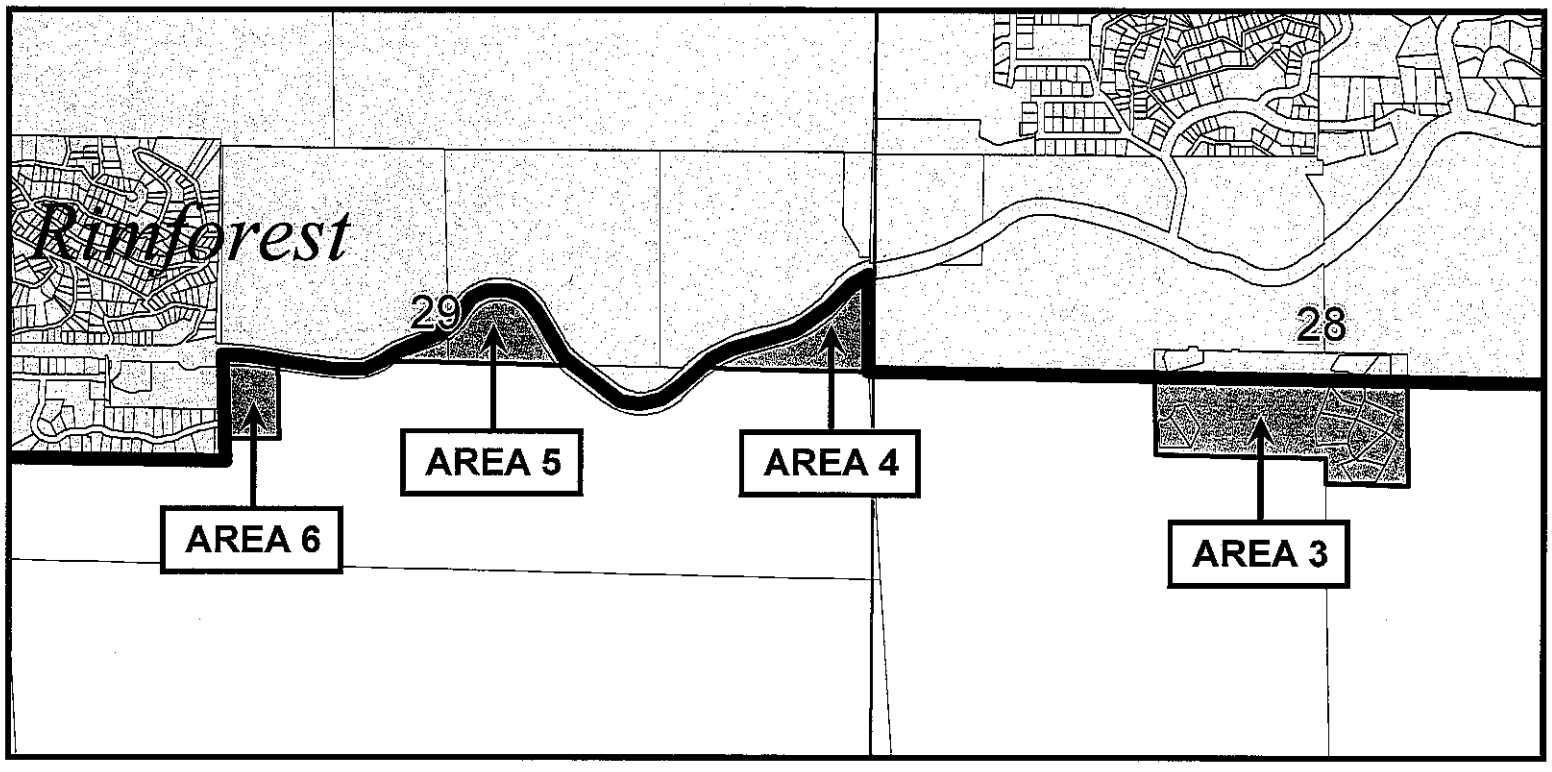
AREA 2 - Sphere Expansion for Lake Arrowhead Community Services District

Portions of Section 23, 26, and 27, Township 2 North, Range 3 West, San Bernardino Meridian, containing 760 acres, more or less.

Sphere Expansion Existing Sphere District Boundary

Exhibit A

Exhibit A



LAFCO 3110 - SPHERE OF INFLUENCE AMENDMENTS (EXPANSIONS) FOR
LAKE ARROWHEAD COMMUNITY SERVICES DISTRICT

AREA 3 - Sphere Expansion for Lake Arrowhead CSD

Portion of Section 28, Township 2 North, Range 3 West, San Bernardino Meridian, containing 18.3 acres, more or less

AREA 4 - Sphere Expansion for Lake Arrowhead CSD

Portion of Section 29, Township 2 North, Range 3 West, San Bernardino Meridian, containing 6.3 acres, more or less

AREA 5 - Sphere Expansion for Lake Arrowhead CSD

Portion of Section 29, Township 2 North, Range 3 West, San Bernardino Meridian, containing 6.4 acres, more or less

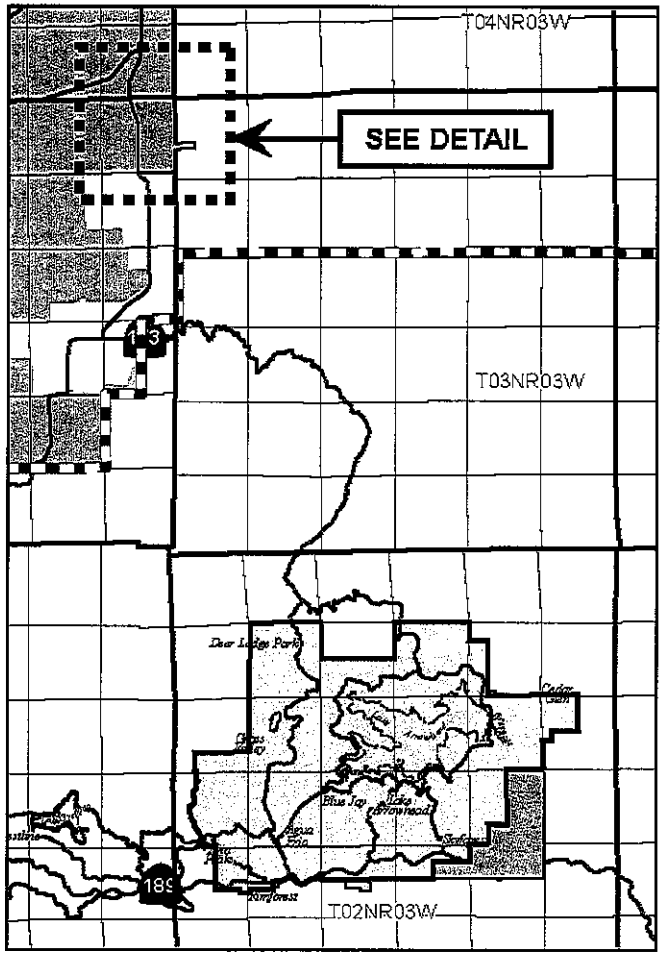
AREA 6 - Sphere Expansion for Lake Arrowhead CSD

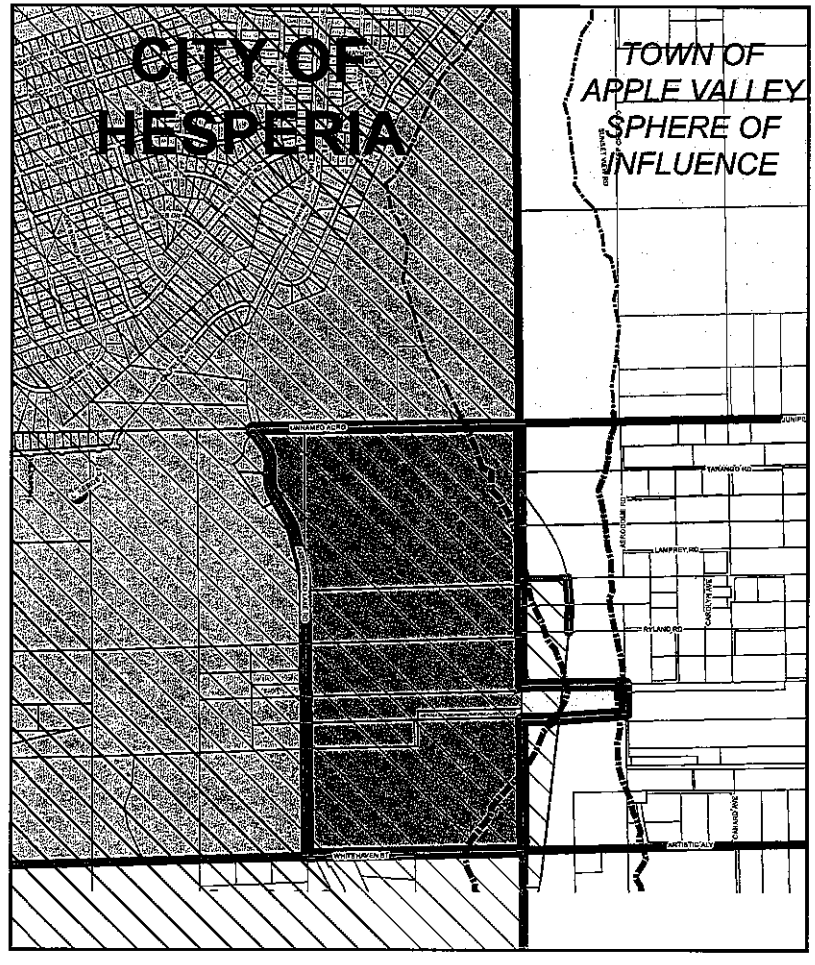
Portion of Section 29, Township 2 North, Range 3 West, San Bernardino Meridian, containing 3.9 acres, more or less

Sphere Expansion Existing Sphere District Boundary

Exhibit A

Exhibit A





LAFCO 3110 - SPHERE OF INFLUENCE AMENDMENT (EXPANSIONS) FOR LAKE ARROWHEAD COMMUNITY SERVICES DISTRICT

Sphere Expansion for Lake Arrowhead Community Services District to Include 10 District-Owned Properties Within and Adjacent to the City of Hesperia

Exhibit A

Portion of Section 1, Township 3 North, Range 4 West, and portion of Section 6, Township 3 North, Range 3 West, San Bernardino Meridian, containing 344.1 acres, more or less

Sphere Expansion | Existing Sphere | District Boundary | City of Hesperia | Hesperia Sphere

Exhibit A

LANDOWNER CONSENT FORM

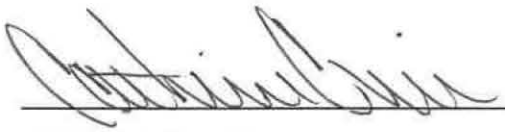
Local Agency Formation Commission
For San Bernardino County

I (We), Lake Arrowhead Community Services District, consent to the annexation/ reorganization of my (our) property located at:

6727 Arrowhead Lake Road, Hesperia, California 92345

which is identified as Assessor's Parcel Number(s) 0397-013-03, 0397-013-04, 0397-013-05, 0397-013-17, 0397-013-18, 0397-013-19, 0397-013-20, 0397-013-21, 0397-013-22, 0433-171-72, 0433-171-74

to the Lake Arrowhead Community Services District.
(name of agency)

Signature(s): 

Address: 27307 State Hwy. 189

City, State, Zip Blue Jay, California 92317

Date Signed: 9/8/2022

If a corporation or company owns the property, please provide with this form authorization from the entity for the signer to sign on its behalf.

TOM DODSON & ASSOCIATES

Mailing Address: **PO Box 2307, San Bernardino, CA 92406-2307**
Physical Address: **2150 N. Arrowhead Avenue, San Bernardino, CA 92405**
Tel: (909) 882-3612 ✦ Fax: (909) 882-7015 ✦ Email: tda@tdaenv.com
Web: tdaenvironmental.com

November 6, 2023

Mr. Samuel Martinez
Local Agency Formation Commission
1170 West 3rd Street, Unit 150
San Bernardino, CA 92415-0490

Dear Sam:

LAFCO 3260 consists of an Annexation request by the Lake Arrowhead Community Services District (District) to annex District-owned properties. The proposed Annexation area includes several parcels of land located east of the City of Hesperia, adjacent to the Mojave River channel. See the attached map. The area proposed for Annexation encompasses approximately 344 acres of vacant land at 6727 Arrowhead Lake Road that has been used by the District to dispose of its treated effluent. The proposed Annexation area is located within the District's Sphere of Influence. The District proposes to continue use of this property for disposal of the treated effluent which returns this water to the Mojave River groundwater basin for reuse downstream. Approval of LAFCO 3260 will exempt the District from property taxes, but no services would be extended to the property; thus, it will not result in any specific new physical changes to the environment.

Therefore, after careful review, I am recommending that the Commission consider the adoption of a Common Sense exemption for LA 3260. I recommend that the Commission find that a statutory exemption (as defined in CEQA applies to LAFCO 3260 under Section 15061(b)(3) of the State CEQA Guidelines, which states: "*The activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.*" It is my opinion, and recommendation to the Commission, that this circumstance applies to LAFCO 3260 because the District will simply continue its existing activity on the property with no new physical changes to the proposed annexation area.

Based on this review of LAFCO 3260 and the pertinent sections of CEQA and the State CEQA Guidelines, I conclude that LAFCO 3260 does not constitute a project under CEQA and adoption of the common sense exemption and filing of a Notice of Exemption is the most appropriate determination to comply with CEQA for this action. The Commission can approve the review and findings for this action and I recommend that you notice LAFCO 3260 as exempt from CEQA for the reasons outlined in the State CEQA Guideline section cited above. The Commission needs to file a Notice of Exemption with the County Clerk to the Board for this action once the hearing is completed.

A copy of this exemption recommendation should be retained in LAFCO's project file to serve as verification of this evaluation and as the CEQA environmental determination record. If you have any questions, please feel free to give me a call.

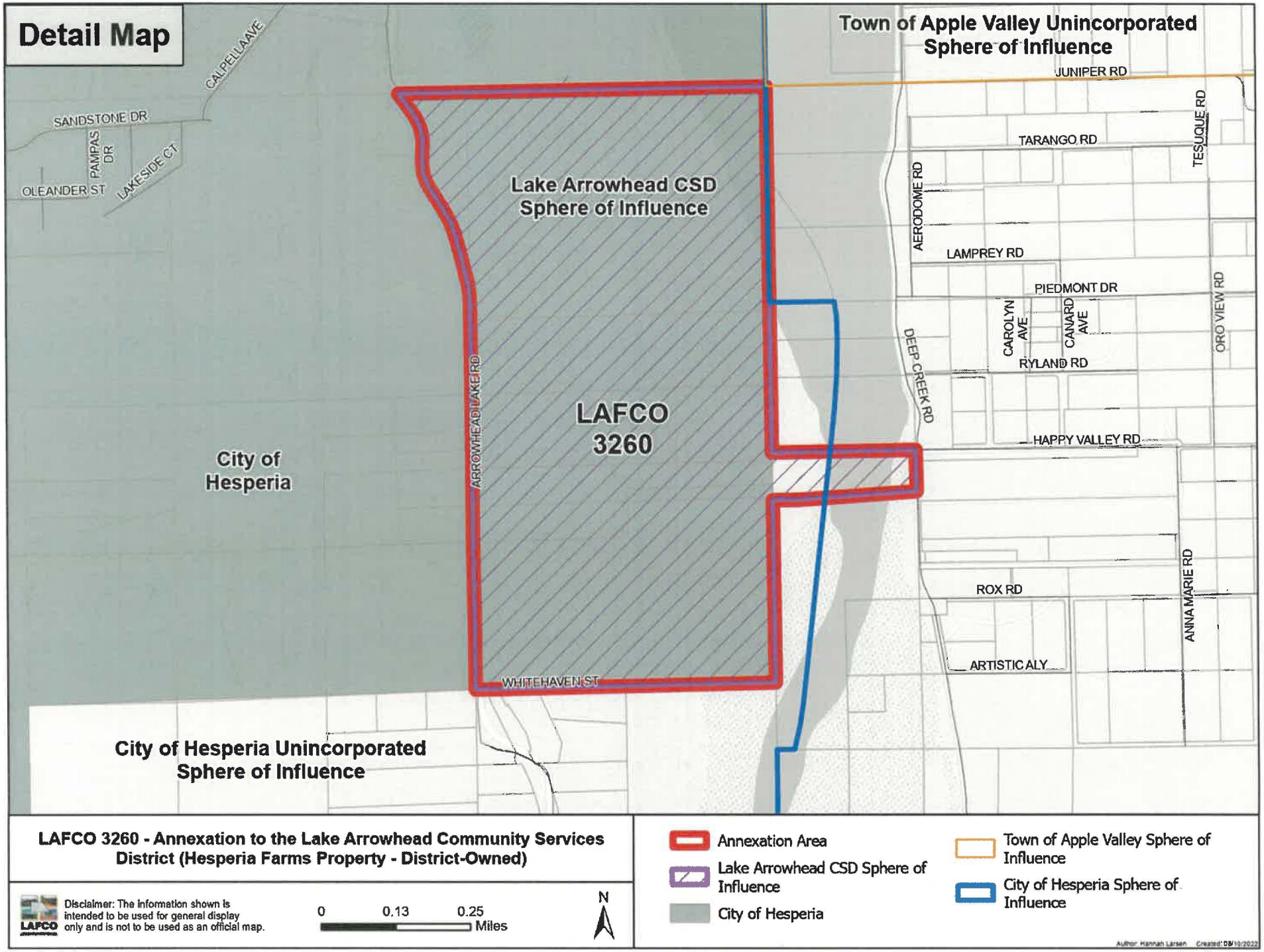
Sincerely,

Tom Dodson

TD/cmc

Attachment

LAFCO LA-3260 Annex SE NOE Memo


Detail Map
Town of Apple Valley Unincorporated Sphere of Influence
Lake Arrowhead CSD Sphere of Influence
LAFCO 3260
City of Hesperia
City of Hesperia Unincorporated Sphere of Influence
CALPELLA AVE
SANDSTONE DR
PAMPAS DR
LAKESIDE CT
OLEANDER ST
ARROWHEAD LAKE RD
WHITEHAVEN ST
JUNIPER RD
TARANGO RD
TESUQUE RD
AERODOME RD
LAMPREY RD
PIEDMONT DR
CAROLYN AVE
CANARD AVE
ORO VIEW RD
DEEP CREEK RD
RYLAND RD
HAPPY VALLEY RD
ROX RD
ANNA MARIE RD
ARTISTIC ALY
LAFCO 3260 - Annexation to the Lake Arrowhead Community Services District (Hesperia Farms Property - District-Owned)
Disclaimer: The information shown is intended to be used for general display only and is not to be used as an official map.
0
0.13
0.25
Miles
N
Annexation Area
Lake Arrowhead CSD Sphere of Influence
City of Hesperia
Town of Apple Valley Sphere of Influence
City of Hesperia Sphere of Influence
Author: Hannah Larsen Created: 08/10/2022

LOCAL AGENCY FORMATION COMMISSION
FOR SAN BERNARDINO COUNTY

1170 West Third Street, Unit 150, San Bernardino, CA 92415-0490
(909) 388-0480 • Fax (909) 388-0481
lafco@lafco.sbcounty.gov
www.sbclafco.org

PROPOSAL NO.: LAFCO 3260

HEARING DATE: JANUARY 17, 2024

RESOLUTION NO. 3386

A RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY MAKING DETERMINATIONS ON LAFCO 3260 AND APPROVING THE ANNEXATION TO THE LAKE ARROWHEAD COMMUNITY SERVICES DISTRICT (HESPERIA FARMS PROPERTY - DISTRICT OWNED). The annexation area comprises approximately 344 acres generally located along the Mojave River on the east side of Arrowhead Lake Road immediately south of the Hesperia Lake Park, within the Lake Arrowhead Community Services District sphere of influence.

On motion of Commissioner _____, duly seconded by Commissioner _____, and carried, the Local Agency Formation Commission adopts the following resolution:

WHEREAS, an application by the Lake Arrowhead Community Services District Board of Directors for the proposed annexation in San Bernardino County was filed with the Executive Officer of this Local Agency Formation Commission (hereinafter referred to as "the Commission") in accordance with the Cortese-Knox- Hertzberg Local Government Reorganization Act of 2000 (Government Code Sections 56000 et seq.), and the Executive Officer has examined the application and executed his certificate in accordance with law, determining and certifying that the filings are sufficient;and,

WHEREAS, at the times and in the form and manner provided by law, the Executive Officer has given notice of the public hearing by the Commission on this matter; and,

WHEREAS, the Executive Officer has reviewed available information and prepared a report including his recommendations thereon, the filings and report and related information having been presented to and considered by this Commission; and,

WHEREAS, the public hearing by this Commission was called for January 17, 2024, at the time and place specified in the notice of public hearing; and,

WHEREAS, at the hearing, this Commission heard and received all oral and written support and/or opposition; the Commission considered all plans and proposed changes of organization, objections and evidence which were made, presented, or filed; it received

evidence as to whether the territory is inhabited or uninhabited, improved or unimproved; and all persons present were given an opportunity to hear and be heard in respect to any matter relating to the application, in evidence presented at the hearing.

NOW, **THEREFORE**, **BE IT RESOLVED**, that the Commission does hereby determine, find, resolve, and order as follows:

DETERMINATIONS:

SECTION 1. The proposal is approved subject to the terms and conditions hereinafter specified:

Condition No. 1. The boundaries are approved as set forth in Exhibits "A" and "A-1" attached.

Condition No. 2. The following distinctive short-form designation shall be used throughout this proceeding: LAFCO 3262.

Condition No. 3. All previously authorized charges, fees, assessments, and/or taxes currently in effect by the Lake Arrowhead Community Services District (annexing agency) shall be assumed by the annexing territory in the same manner as provided in the original authorization pursuant to Government Code Section 56886(t).

Condition No. 4. The Lake Arrowhead Community Services District shall indemnify, defend, and hold harmless the Local Agency Formation Commission for San Bernardino County from any legal expense, legal action, or judgment arising out of the Commission's approval of this proposal, including any reimbursement of legal fees and costs incurred by the Commission.

Condition No. 5. The date of issuance of the Certificate of Completion shall be the effective date of this annexation.

SECTION 2. The Commission determines that:

a) this proposal is certified to be legally uninhabited;

b) it has 100 % landowner consent; and,

c) no written opposition to a waiver of protest proceedings has been submitted by the subject agency.

Therefore, the Commission does hereby waive the protest proceedings for this action as permitted by Government Code Section 56662(d).

SECTION 3. **DETERMINATIONS.** The following determinations are required to be provided by Commission policy and Government Code Section 56668:

1. The County Registrar of Voters Office has determined that the annexation area is legally uninhabited, containing zero registered voters as of October 11, 2023.

2. The County Assessor's Office has determined that the total assessed value of land within the annexation area is $531,416 as of December 20, 2022.

3. The annexation area is within the sphere of influence assigned the Lake Arrowhead Community Services District.

4. Legal notice of the Commission's consideration of the proposal has been provided through publication in the *Alpine Mountaineer News*, a newspaper of general circulation within the Lake Arrowhead community, and *The Daily Press, a* newspaper of general circulation within the annexation area. As required by State law, individual notification was provided to affected and interested agencies, County departments, and those individuals and agencies having requested such notice.

5. In compliance with the requirements of Government Code Section 56157 and Commission policies, LAFCO staff has provided individual notice to landowners (170) and registered voters (76) surrounding the annexation area (totaling 246 notices). Comments from registered voters, landowners, and other individuals and any affected local agency in support or opposition have been reviewed and considered by the Commission in making its determination.

6. The City of Hesperia's zoning designation for the portion of the area that is in the city is RR-2½ (Rural Residential, 2.5 acres minimum). The County's current land use designations for the annexation area are: FW (Floodway) and RL-10 (Rural Living, 10 acres minimum). This annexation has no direct impact on said land use designations.

7. The Southern California Associated Governments (SCAG) has adopted its 2020-2045 Regional Transportation Plan and Sustainable Communities Strategy (RTPSCS) pursuant to Government Code Section 65080. LAFCO 3260 has no direct impact on SCAG's Regional Transportation Plan and Sustainable Communities Strategy.

8. The Commission's Environmental Consultant, Tom Dodson and Associates, has recommended that this proposal is exempt from environmental review based on the finding that the Commission's approval of the annexation has no potential to cause any adverse effect on the environment; and therefore, the proposal is exempt from the requirements of CEQA, as outlined in the State CEQA Guidelines, Section 15061 (b)(3). Mr. Dodson recommends that the Commission adopt the Exemption and direct its Executive Officer to file a Notice of Exemption within five (5) days.

9. The annexation area is served by the following local agencies:

   County of San Bernardino
   City of Hesperia (portion)
   Hesperia Water District (portion)

Hesperia Park and Recreation District (portion)
Mojave Water Agency
Mojave Desert Resource Conservation District
San Bernardino County Fire Protection District, its North Desert Service Zone, and its Zone FP-5 (portion)
County Service Area 60 (Apple Valley Airport)
County Service Area 70 (unincorporated County-wide multi-function agency -- portion)

None of the agencies are be detached as a function of this annexation. Said agencies will continue to overlay the annexation area.

10. A plan for service was prepared for the annexation area, as required by law. The The Plan indicates no service are anticipated to change as a result of the annexation. The annexation into the Lake Arrowhead Community Services District is to relieve itself of a recurring annual property tax obligation on the District-owned parcels. As a result, the proposed annexation will have a positive financial effect (savings) for the District. A copy of this plan is included as a part of Attachment #2 to this report.

11. The annexation can benefit from the availability and extension of services provided by any of the underlying agencies. However, the plan for service indicates no service are anticipated to change as a result of the annexation

12. This proposal will not affect the fair share allocation of the regional housing needs assigned the County or the City of Hesperia through the Southern California Association of Government's (SCAG) Regional Housing Needs Allocation (RHNA) since the annexation area will remain vacant and used for public facilities (i.e. percolation ponds).

13. With respect to environmental justice, the annexation proposal—wherein the parcels being annexed into the Lake Arrowhead Community Services District will remain vacant and used for public facilities (groundwater recharge)—will not result in the unfair treatment of any person based on race, culture or income.

14. The County of San Bernardino adopted a resolution determining there will be a zero property tax transfer as a result of the annexation. This fulfills the requirements of Section 99 of the Revenue and Taxation Code.

15. The maps and legal descriptions as revised are in substantial compliance with LAFCO and State standards through certification by the County Surveyor's Office.

SECTION 4. The primary reason the annexation is to relieve Lake Arrowhead Community Services Distrtict of a recurring annual property tax obligation on the District-owned parcels, which is a savings that would benefit the ratepayers for the District. A public agency is only exempt from paying property taxes on lands that it owns if the lands are within the agency's boundaries.

SECTION 5. The affected territory shall not be taxed for existing bonded indebtedness or contractual obligations of the Lake Arrowhead Community Services District through the annexation. The Lake Arrowhead Community Services District also utilizes the regular County assessment rolls.

SECTION 6. Approval by the Local Agency Formation Commission indicates that completion of this proposal would accomplish the proposed change of organization in a reasonable manner with a maximum chance of success and a minimum disruption of service to the functions of other local agencies in the area.

SECTION 7. The Commission hereby orders the territory described in Exhibits "A" and "A-1" annexed. The Commission hereby directs, that following completion of the reconsideration period specified by Government Code Section 56895(b), the Executive Officer shall prepare and file a Certificate of Completion, as required by Government Code Section 57176 through 57203, and a Statement of Boundary Change, as required by Government Code Section 57204.

SECTION 8. The Executive Officer is hereby authorized and directed to mail certified copies of this resolution in the manner provided by Section 56882 of the Government Code.

THIS ACTION APPROVED AND ADOPTED by the Local Agency Formation Commission for San Bernardino County by the following vote:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

*** ***

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

I, SAMUEL MARTINEZ, Executive Officer of the Local Agency Formation Commission for San Bernardino County, California, do hereby certify this record to be a full, true, and correct copy of the action taken by said Commission by vote of the members present as the same appears in the Official Minutes of said Commission at its regular meeting of January 17, 2024.

DATED:

_____
SAMUEL MARTINEZ
Executive Officer

LAFCO 3260 – ANNEXATION TO THE LAKE ARROWHEAD COMMUNITY SERVICES DISTRICT
(Hesperia Farms Property – District Owned)

THOSE PORTIONS OF LAND LOCATED IN THE WEST HALF OF SECTION 6, TOWNSHIP 3 NORTH, RANGE 3 WEST AND IN SECTION 1, TOWNSHIP 3 NORTH, RANGE 4 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 6:

COURSE 1. THENCE SOUTH, A DISTANCE OF 3420.35 FEET ALONG THE WEST LINE OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 6, ALSO BEING THE EXISTING CITY OF HESPERIA BOUNDARY PER LAFCO 2581 ANNEXATION, TO THE WEST ONE-QUARTER CORNER OF SAID SECTION 6, ALSO BEING THE NORTHWEST CORNER OF GOVERNMENT LOT 13 OF SAID SECTION 6, AS SHOWN ON PARCEL MAP NO. 1530 IN BOOK 13 OF PARCEL MAPS, PAGE 76, RECORDS OF SAID COUNTY;

COURSE 2. THENCE NORTH 89°36'46"EAST, A DISTANCE OF 1272.30 FEET ALONG TO NORTH LINE OF SAID GOVERNMENT LOT 13, TO THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 13;

COURSE 3. THENCE SOUTH 00°32'58" EAST, A DISTANCE OF 374.13 FEET ALONG THE EAST LINE OF SAID GOVERNMENT LOT 13;

COURSE 4. THENCE LEAVING SAID EAST LINE, SOUTH 86°32'58" WEST, A DISTANCE OF 968.31 FEET;

COURSE 5. THENCE SOUTH 89°32'07" WEST, A DISTANCE OF 309.22 FEET TO THE WEST LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 6, ALSO BEING THE EAST LINE OF THE SOUTHEAST ONE-QUARTER SAID SECTION 1, ALSO BEING THE EXISTING CITY OF HESPERIA BOUNDARY PER LAFCO 2581 ANNEXATION;

COURSE 6. THENCE SOUTH, A DISTANCE OF 1609.91 FEET ALONG SAID EAST LINE OF THE SOUTHEAST ONE-QUARTER OF SECTION 1 TO THE SOUTHEAST CORNER OF SAID SECTION 1;

COURSE 7. THENCE SOUTH 89°20'02" WEST, A DISTANCE OF 2655.85 FEET ALONG THE SOUTH LINE OF SAID SOUTHEAST ONE-QUARTER SAID SECTION 1, ALSO BEING THE EXISTING CITY OF HESPERIA BOUNDARY PER LAFCO 2581 ANNEXATION, TO THE SOUTH QUARTER CORNER OF SAID SECTION 1;

EXHIBIT A

COURSE 8. THENCE NORTH 00°07'12" EAST, A DISTANCE OF 2605.83 FEET ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 1 TO THE CENTER OF SAID SECTION 1, ALSO BEING THE SOUTHWEST CORNER OF GOVERNMENT LOT 1 OF SAID SECTION 1;

COURSE 9. THENCE CONTINUING NORTH 00°07'12" EAST, A DISTANCE OF 794.26 FEET ALONG THE WEST LINE OF GOVERNMENT LOT 1 OF SAID SECTION 1, ALSO BEING THE CENTERLINE OF ARROWHEAD LAKE ROAD, AS SHOWN ON PARCEL MAP NO. 8762, AS RECORDED IN BOOK 95 OF PARCEL MAPS, PAGES 47 AND 48, RECORDS OF SAID COUNTY, TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY, AND HAVING A RADIUS OF 1100.00 FEET;

COURSE 10. THENCE LEAVING THE WEST LINE OF SAID GOVERNMENT LOT 1, NORTHWESTERLY, ALONG SAID CENTERLINE OF ARROWHEAD ROAD AS FOLLOWS: ALONG THE ARC OF SAID CURVE, AN ARC DISTANCE OF 278.76 FEET THROUGH A CENTRAL ANGLE OF 14°31'12";

COURSE 11. THENCE NORTH 14°24'00" WEST, A DISTANCE OF 311.48 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 950.00 FEET;

COURSE 12. THENCE ALONG THE ARC OF SAID CURVE, AN ARC DISTANCE OF 266.40 FEET THROUGH A CENTRAL ANGLE OF 16°04'00";

COURSE 13. THENCE NORTH 30°28'00" WEST, A DISTANCE OF 264.09 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 400.00 FEET;

COURSE 14. THENCE ALONG THE ARC OF SAID CURVE, AN ARC DISTANCE OF 230.03 FEET THROUGH A CENTRAL ANGLE OF 32°57'00";

COURSE 15. THENCE NORTH 02°29'00" EAST, A DISTANCE OF 152.36 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 450.00 FEET;

COURSE 16. THENCE ALONG THE ARC OF SAID CURVE, AN ARC DISTANCE OF 301.99 FEET THROUGH A CENTRAL ANGLE OF 38°27'00";

COURSE 17. THENCE NORTH 35°58'00" WEST, A DISTANCE OF 211.73 FEET TO THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 1;

COURSE 18. THENCE NORTH 89°29'07" EAST, A DISTANCE OF 609.19 FEET, ALONG SAID NORTH LINE TO THE NORTH QUARTER CORNER OF SAID SECTION1;

COURSE 19. THENCE NORTH 89°29'07" EAST, A DISTANCE OF 2644.71 FEET ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 1, TO THE **POINT OF BEGINNING;**

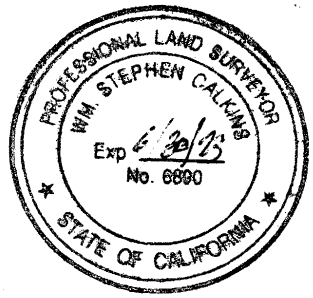
END OF DESCRIPTION

DESCRIBED PARCEL CONTAINS 344.39 ACRES, MORE OR LESS.

THIS DESCRIPTION WAS PREPARED BY ME, A LICENSED LAND SURVEYOR IN THE STATE OF CALIFORNIA, PURSUANT TO SECTION 8761 OF THE STATE LAND SURVEYORS ACT.

DATE: 03/16/2023

WM. STEPHEN CALKINS, P.L.S. 6890



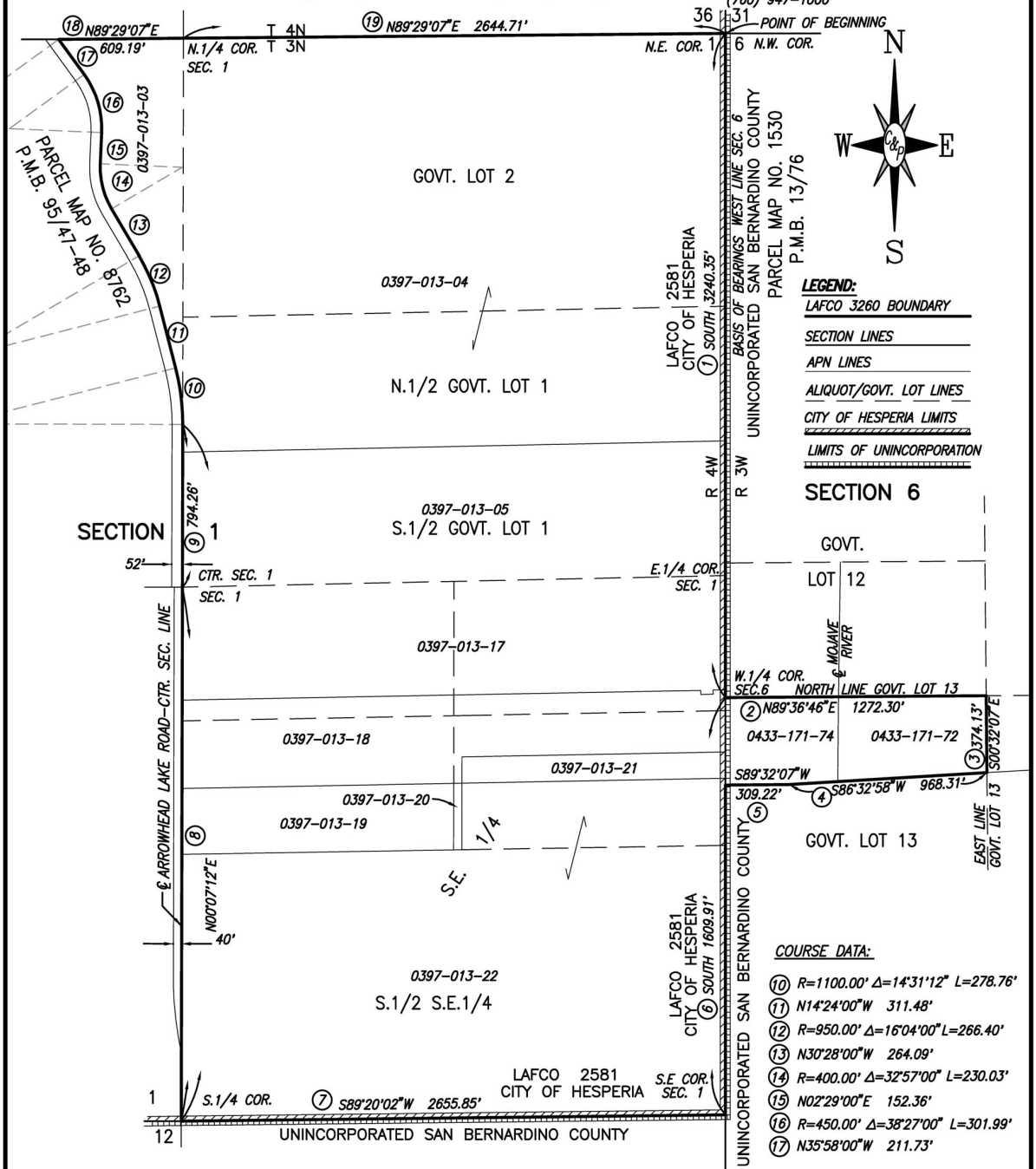
LAFCO 3260 – ANNEXATION TO THE LAKE ARROWHEAD COMMUNITY SERVICES DISTRICT

Hesperia Farms Property – District Owned

GENERAL DESCRIPTION: East of Arrowhead Lake Road/South of Hesperia Lake Park
344.39 Acres of Sec. 1, T.3N, R.4W & Sec. 6, T.3N, R.3W, S.B.M.

AFFECTED AGENCIES:
LAKE ARROWHEAD COMMUNITY SERVICES DISTRICT
P.O. BOX 700
LAKE ARROWHEAD, CA 92352
(909) 336-7100

CITY OF HESPERIA
9700 SEVENTH AVE.
HESPERIA, CA 92345
(760) 947-1000



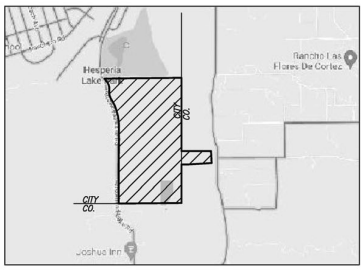
THIS MAP WAS PREPARED UNDER MY SUPERVISION, A LICENSED LAND SURVEYOR IN THE STATE OF CALIFORNIA.

DATE: MARCH 16, 2023

WM. STEPHEN CALKINS
P.L.S. 6890

PROFESSIONAL LAND SURVEYOR
WM. STEPHEN CALKINS
Exp. 06/30/23
PLS 6890
STATE OF CALIFORNIA

VICINITY MAP
N.T.S.



GRAPHIC SCALE

500 0 250 500 1000

(IN FEET)
1 inch = 500 ft.