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File No: 460/3

June 30, 2009

VIA ELECTRONIC MAIL

Mpoyatos@co.sanmateo.ca.us

Ms. Martha Poyatos, Executive Officer
San Mateo Local Agency Formation Commission
455 County Center
Redwood City, CA 94063

Re: Comments on Circulation Draft-Municipal Services Review and Sphere of
Influence Update, City of East Palo Alto; San Mateo County Local Agency
Formation Commission

Dear Ms. Poyatos:

I. INTRODUCTION

The communication comments on behalf of Woodland Park Management, LLC (“Woodland Park”) on the proposed Municipal Services Review (“MSR”) and the related Sphere of Influence (“SOI”) update of the City of East Palo Alto (“City”) prepared under the provisions of the Cortese-Knox Hertzberg Local Government Reorganization Act of 2000 (Government Code section 56000 *et seq.*, the “Act”),¹ before the Local Agency Formation Commission of San Mateo County (“Commission”).²

¹ All references will be to the Government Code unless otherwise noted.

² The Commission will sometimes be referenced as a “Local Agency Formation Commission” or “LAFCO” in this communication.

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Woodland Park manages approximately 1,700 units of primarily mid-rise multi-family residential apartments in the City west and south of the 101 Freeway, adjacent to the City of Palo Alto (to the south and west), which is bordered on the North by the City of Menlo Park.³ The area surrounds the University Circle office and hotel complex and is referred to as the “affected area” in the balance of this communication.

On June 10, 2009, LAFCO Staff presented to the Commission, a Staff Report and Draft Circulation Municipal Service Review and Sphere of Influence Update for the City MSR (“Draft Review”) based on information provided by the City. The Draft Review proposes that LAFCO make findings that the City has adequate capacity for presently supplying and supplying in the future, services to the relevant area.

Woodland Park maintains that information available from the City⁴ and other government sources indicate that the proposed findings for the adequacy of City governmental services *cannot* be made under the Act and that *alternative* SOI options should be presented allowing for other means of providing governmental services to Woodland Park’s property and the other properties in the affected area because of the City’s current and expected future service inadequacies.

II. SUMMARY OF COMMENTS PRESENTED

Woodland Park respectfully submits that the Draft Review is legally insufficient due to the City’s failure to provide the Executive Officer with sufficient information to make the findings required by the Act for an MSR.

Any LAFCO action must be supported by substantial evidence including the determination of the factors associated with an MSR. The City has not set forth substantial evidence, nor does such evidence exist, to support the required MSR findings. The City has failed to present substantial evidence to show the adequacy of the City’s present and planned capacity of public services in light of the overwhelming existing evidence of deficient City

³ Woodland Park is an affiliated limited liability corporation of Page Mill Properties, LLC (“Page Mill”).

⁴ Woodland Park from the outset observes that obtaining City documents either on-line or in person is difficult. In many cases on-line references do not contain documents described or if the documents are linked they are incomplete.

law enforcement and crime prevention services, deficient City road maintenance, and deficient lighting. The City has provided little or no information regarding the capacity, present or planned, of other City services, including water supply, City vehicle fleet, storm drains, sewer system and road systems. The City has also failed to provide evidence that it has the financial ability to adequately and efficiently provide those governmental services, an established purpose of the Commission⁵ and has failed to point out for inclusion of the Draft Review, the potential impacts of State revenue transfers from the City.

The City has provided no evidence to identify opportunities for shared facilities under Section 56430(a)(4), or to support the Section 56430(a)(5) finding of adequate accountability for community service needs including governmental structure and operational efficiencies.

The Draft Review, when finalized, should acknowledge the failure of the City to comply with, and implement, its General and Redevelopment Plans. The City has failed to explain how the City General Plan Safety Element, Redevelopment Plan and other General Plan elements such as the Housing Element Update have been implemented or are consistent. The Draft Review should indicate that the City is not implementing the goals and/or policies of the General and Redevelopment Plans.

Finally, the Draft Review contains no SOI alternatives. LAFCO must consider alternatives to the existing SOI. Given the City's inability to provide City services, LAFCO should consider the option of reducing the City SOI to remove the affected area, allowing the formation of the community services district to directly address the deficiency of services.

III. PROCEDURAL REQUIREMENTS OF THE ACT

The Commission must conduct an MSR, prior to updating an SOI which contains a comprehensive study of each identifiable public service provided by the City, containing specific findings describing the present, and future services capacity and efficiency, in the area in, and around, the City. *See*, § 56430; Governor's Office of Planning and Research, Local Agency Formation Commission Municipal Service Review Guidelines, dated August

⁵ *See*, Section 56301.

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2003 (“*MSR Guidelines*”);⁶ Municipal Service Review Policies, San Mateo County LAFCO, dated March 20, 2002 (“*MSR Policies*”).⁷

Woodland Park experiences, sometimes daily, inadequate and sometimes non-existent services, including but not limited to, law enforcement, street maintenance, street lighting, and general governance including the day-to-day administration of City government including the administration by the City of its Rent Control Ordinance and compliance with the Ralph M. Brown Open Meeting Act (§ 54950 *et seq.*, the “Brown Act”) and the California Public Records Act (§ 6250 *et seq.*).

This communication describes City deficiencies in the five of the six mandatory MSR findings areas as supported by substantial evidence in the attached Appendix of documentary evidence (“Appendix”) and online references.⁸

The Commission, of course, *must rely* on the City for information gathering for the required MSR findings [*MSR Policies*, § VIII], however, there is insufficient substantial evidence submitted by the City to support the required Section 56430 MSR findings. Accordingly, the eventual adopted MSR should accurately reflect the reality of the inefficiencies of City governmental services and present other governmental service options.

⁶ The MSR Guidelines are available online at:
http://www.opr.ca.gov/planning/publications/General_Plan_Guidelines_2003.pdf.

⁷ The Commission has adopted Guidelines as authorized by Section 56375 for processing MSRs, with which all LAFCO actions must be consistent. § 56375; 56815.2. They are available online at:
http://www.co.sanmateo.ca.us/vgn/images/portal/cit_609/20/22/293799755msr-policies.pdf.

⁸ This communication also demonstrates how, given the lack of present and planned City service capacity, as well as the City’s failure to comply with, and implement, its Redevelopment and General Plan policies, it cannot ensure that LAFCO objectives for efficient development are achieved and that legally adequate findings, as required by the Act can be made. In examining this issue the standards of the Governor’s Office of Planning and Research the 2003 *General Plan Guidelines* (“*General Plan Guidelines*”), p. 187, *available online at*:
http://www.opr.ca.gov/planning/publications/General_Plan_Guidelines_2003.pdf, will be referenced.

IV. FACTUAL SUMMARY

As a long-standing property manager in the City, Woodland Park has experienced seriously inadequate public services in and around its properties – something which, according to documents in the public domain, occurs in the rest of the City as well. Included among the lack of public services are adequate and consistent crime prevention and law enforcement, road maintenance, street lighting deficiencies and failure of the day-to-day administration of City business.

These facts also show⁹ that the City has failed to comply with, and implement, its General Plan Safety and Housing Element policies and to timely update its Housing Element, and implement its Redevelopment Plan, all failures of governance.

V. DOCUMENTS REVIEWED

These comments are based on the documents included in the Appendix and the Draft Review. The Appendix contains Woodland Park/Page Mill communications with City departments requesting resolution of issues related to efficient governmental service, and attempting to cooperate with the City to alleviate the problems. The Appendix also contains public documents from the City and other public agencies setting forth law enforcement and crime prevention budget, logistical and infrastructure deficiencies that prevent the City from providing sufficient public services. Finally, the Appendix also presents regional media presentations confirming the limitations that the City has in providing efficient governmental services to its residents and property owners.

⁹ The experience of Woodland Park, which is based on personal observation, constitutes substantial evidence. *See, Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal. App. 3d 872, 882.

VI. MSR REQUIREMENTS AND STANDARD OF REVIEW

A. MSR REQUIREMENTS

1. MSR Purpose

The MSR is a *prerequisite* to the change or confirm an SOI. § 56430. As the *MSR Guidelines* and *Policies* indicate, the mandate for municipal service reviews is the product of the Commission on Local Governance of the 21st Century report entitled “Growth Within Bounds” (“*Growth Within Bounds*”).¹⁰

Among the most fundamental purposes of LAFCO iterated in GC §56001, §56300, and §56301 are to ‘encourage orderly growth’, provide ‘... planned, well-ordered, efficient urban development patterns ...’, and ‘... advantageously provide for the present and future needs of each county and its communities.’ These directives imply that each LAFCO has comprehensive knowledge of the services available within its county, the current efficiency of providing service within various areas of the county, future needs for each service, and expansion capacity of each service provider.

* * *

(Emphasis added)

¹⁰ As one Court has pointed out:

... the legislative intent of the Act, [is] expressed in a Report of the Commission on Local Governance for the 21st Century... (*Growth Within Bounds*), which was published in January 2000 as a Report of the Commission on Local Governance for the 21st Century.

Placer County Local Agency Formation Com. v. Nevada County Local Agency Formation Com. (2006) 135 Cal.App.4th 793, 817 (“*Placer County*”). *Growth Within Bounds* is available online at: <http://www.opr.ca.gov/planning/docs/79515.pdf>.

A service review would encompass a comprehensive study of each identifiable public service provided by counties, special districts, and cities in the region. The review would not focus exclusively on an individual jurisdiction to determine its future boundary or service areas. Rather, it would require LAFCO to look broadly at all agencies within a geographic region that provide a service. *The review would also include a component that examines the benefits or disadvantages of consolidation or reorganization of service providers.*

Growth Within Bounds, p. 98-99. (Emphasis added)

Further, “*It is the intent of the Commission that this function be considered a state mandate because of the benefits for achieving a logical extension of local services to meet California’s future growth and development.*” *Growth Within Bounds*, Recommendation 6-7, p. 167. (Emphasis added)

In other words, it is clear that the intent and mandate of the Act is that an MSR identify alternative governmental service providers and other means to ensure more efficient governmental services.

2. MSR Requirements

Section 56430 sets forth MSR requirements:

(a) In order to prepare and to update spheres of influence in accordance with Section 56425, the commission shall conduct a service review of the municipal services provided in the county or other appropriate area designated by the commission. The commission shall include in the area designated for service review the county, the region, the subregion, or any other geographic area as is appropriate for an analysis of the service or services to be reviewed, and shall prepare a written statement of its determinations with respect to each of the following:

(1) Growth and population projections for the affected area.

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

(3) Financial ability of agencies to provide services.

(4) Status of, and opportunities for, shared facilities.

(5) Accountability for community service needs, including governmental structure and operational efficiencies.

(6) Any other matter related to effective or efficient service delivery, as required by commission policy.

B. FINDINGS MADE UPON APPROVAL OF AN MSR MUST BE SUPPORTED BY SUBSTANTIAL EVIDENCE

LAFCO decisions are characterized as quasi-legislative for which judicial review is appropriate under ordinary mandamus, Code of Civil Procedure section 1085.¹¹ LAFCO actions must be supported by “substantial evidence.” § 56107.

Accordingly, *any action* of a LAFCO must be supported by substantial evidence including that presented by interested parties in a particular action including the determination of the factors associated with a MSR.¹²

VII. THE CITY HAS NOT PROVIDED SUBSTANTIAL EVIDENCE, NOR DOES SUCH EVIDENCE EXIST, TO SUPPORT THE REQUIRED MSR FINDINGS

A. PRESENT AND PLANNED CAPACITY OF PUBLIC FACILITIES AND ADEQUACY OF PUBLIC SERVICES, INCLUDING INFRASTRUCTURE NEEDS OR DEFICIENCIES (§ 56430(a)(2)).

The City has failed to supply substantial evidence to show the adequacy of the City present and planned capacity of public services in light of the overwhelming existing evidence of deficient City law enforcement and crime prevention services, deficient City road maintenance, and deficient lighting. The need for substantial evidence supporting present and

¹¹ *Sierra Club v. San Joaquin Local Agency Formation Commission* (1999) 21 Cal.4th 489, 499.

¹² *Placer County, supra*, 135 Cal.App.4th at 803.
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planned public services adequacy is especially important, given that the Draft Review predicts the City is to grow from a current population of roughly 33,000 to a projected 2035 population of 47,300. Draft Review, p. 5.

1. Inadequate City Law Enforcement and Crime Prevention Services

The Appendix presents evidence that the City does not have the present capacity (nor has it had the capacity) to serve the community with respect to crime prevention services. The Draft Review [pp. 11-12] only briefly provides information regarding the City Police Department statistics, including basic budget and staffing, information. However, substantial evidence shows the City's Police Department's continuing inability to meet its crime prevention duties.

As a part of Woodland Park's continuous experience concerning this inadequacy are specific examples involving its properties and crimes that have taken place on, and around, its properties, as documented in the Appendix. Woodland Park has communicated frequently with the City Police attempting to alleviate, prosecute and prevent crimes. These communications are reproduced in the Appendix, 001-010.¹³ For example, Woodland Park has reported numerous vandalism incidents and other property damage, and has met significant delay in response from the City Police.¹⁴ Appendix, 011-014. In addition, when requesting additional assistance and information from the City Police to investigate and prevent existing and future crime, Woodland Park has been met with opposition and non-cooperation from the City Police. Appendix, 011-014. In particular, the City Police have refused to meet with Woodland Park representatives to work on the crime problem, citing that discussing all concerns would be too time consuming. *See, e.g.*, Appendix, 015-023. Further, City Police have simply refused to respond and follow up on incidents of crime in and around the affected area. Appendix, 024-030.¹⁵

¹³The attached Appendix contains documents numbered 001-148.

¹⁴ One such example occurred in May 2009, where City Police responded to a trespass call, where Woodland Park security guards had witnessed the trespass and the perpetrator had assaulted the guards. Woodland Park security guards reported that the Police officer in question asserted that far from taking action to arrest the trespasser, all Woodland Park could do was to seek a restraining order, and then the trespasser could be arrested.

¹⁵ Despite this unwillingness to work with Woodland Park, on May 26, 2009 the City Police dispatch asked private Woodland Park security to respond to a call received in Police
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The Appendix also presents evidence, not limited to Woodland Park, that the City simply cannot meet the needs of the public with respect to law enforcement and crime prevention.¹⁶

Evidence also shows that the City cannot meet its own law enforcement duties without significant assistance from other law enforcement agencies.

Since 1996, the City has contracted with the County Sheriff's office to provide supplemental law and public safety communications dispatch services. Appendix, 032. The contract, among other things, provided for the County to provide law enforcement personnel to supervise and conduct crime investigation, personnel to provide a Crime Suppression Team whose duty was to:

“work collaboratively with City's Chief of Police to identify and to implement intensive enforcement activities for the suppression of gang-related criminal activities and associated violent street crimes.”

Appendix, 048.

Additionally, the Sheriff's Office provided emergency telephone dispatch services to the City Police. Appendix, 051.

Further, City Police historically have obtained assistance from the Drug Enforcement Agency to conduct mid-level narcotics investigations, from the California Department of Justice to conduct a five year comprehensive violent crime analysis, from the United States

dispatch for a disturbance and noise complaint, rather than the City Police responding themselves.

¹⁶ In another example of City failure to provide adequate law enforcement, and a failure of governance, it was reported that in a City and County subsidized affordable housing development, the Courtyard at Bay Road, has fallen into disrepair resulting in vandalism, which some tenants attribute to “inadequate security.” Jessica Bernstein-Wax, “East Palo Alto subsidized housing complex falls into state of deterioration,” *San Jose Mercury News*, June 24, 2009, *available at*, http://www.mercurynews.com/breakingnews/ci_12685178?source=email.

Marshal Service to serve warrants, and from the San Mateo County Crime Suppression Team to increase their enforcement efforts in the City.¹⁷

The City of Menlo Park, consistent with its Standard Operating Procedures, has responded to several incidents in the City. For example, the City of Menlo Park Police Department as part of its Police Department Policy #352 "Outside Agency Assistance," has responded to at least 187 calls in the City since July 1, 2006.¹⁸ Appendix, 056-061. The City of Palo Alto Police Department, although having no formal agreement with the City, in 2008 alone responded to 45 calls in the City. Appendix, 062-064.

Similarly, the City has requested and obtained assistance in 2005, 2007 and 2008 from the Department of California Highway Patrol ("CHP") most recently formulated in an aid agreement known as "Operation Impact," in which the Redwood City CHP Area assisted the City in combating their gang violence issues by providing aggressive traffic enforcement in their high intensity gang areas. Appendix, 065. Operation Impact generally consisted of one CHP sergeant and 4 CHP officers deploying weekly on Friday, Saturday, and Sunday. Appendix, 067.

One reason for the necessity for outside law enforcement assistance, as the City Police Chief has pointed out, is that the City has difficulty recruiting and retaining quality law enforcement officers. Appendix, 086. The City compensates its law enforcement officers significantly less than other law enforcement officers in the Bay Area. Appendix, 086-097. Despite the fact that City Police pay has increased the Police Department still suffers from this reputation. Appendix, 097.¹⁹

¹⁷ 2003-2004 San Mateo County Grand Jury Report on City Police Department, *available online* at: <http://www.sanmateocourt.org/director.php?filename=./grandjury/2003/index.php>.

¹⁸ City of Menlo Park Police Department Policy #352 clearly indicates that resulting calls *are not* "Mutual Aid" response calls.

¹⁹ As further evidence, the City recently announced that two experienced detectives have left the City Police force. Jessica Bernstein-Wax, "East Palo Alto Police Department roster changing," *San Jose Mercury News*, June 23, 2009, *available at*: http://www.mercurynews.com/breakingnews/ci_12677146?nclick_check=1. City Police officials acknowledge this deficiency, noting that the City "has long had trouble attracting qualified recruits because other Peninsula cities have higher salaries and better retirement deals." *Id.*

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Despite this ongoing outside agency supplemental law enforcement assistance, the City has one of the highest crime and murder rates in the Bay Area and in San Mateo County, which continues.²⁰ According to the City's own records, there were 1747 Serious Crimes²¹ reported in the City in 2008, up from 1167 in 2007 (*an increase of approximately 67%*), and the third most reported since 1999.²²

Again, *this inadequacy is historic*. The previously referenced 2003-2004 Grand Jury Report on the City Police, in accordance with recommendations from PSCComm, a police management consulting firm engaged by the City in July 2000,²³ contained 71 specific recommendations to improve police performance in the City, including the following findings:

- 1) Violent crime continues to be a problem in the City;
- 2) Many City Police improvement recommendations from the consultant were still not implemented;
- 3) The quality of the City Police force remained questionable;
- 4) The leadership of City Police does not enforce policies consistently;
- 5) A leadership succession plan is not being followed.

²⁰ Table 11, CRIMES, 2006, San Mateo County, from Department of Justice Criminal Justice Statistics Center, *available at: http://stats.doj.ca.gov/cjsc_stats/prof06/41/11.pdf*. In 2006, the City was tied for the most homicides in the County with Redwood City, despite the fact that Redwood City has over double the population of the City, and the third most violent crimes behind the City of San Mateo and Redwood City despite the fact that those cities have over three times and two times the population of the City respectively. *Id.*

²¹ The City defines "Serious Crimes" to include homicide, rape, robbery, robbery with a firearm, assault, assault with a firearm, burglary, theft, and auto theft. 2009-2010 Budget, Departmental Budget Report, DB 115, *available at, <http://www.ci.east-palo-alto.ca.us/09-10budget/DEPARTMENTAL%20BUDGETS/PUBLIC%20SAFETY/PUBLIC%20SAFETY.pdf>*.

²² City Fiscal Year 2009-2010 Proposed Operating Budget ("2009-2010 Budget"), Departmental Budget Report, DB 115, *available at, <http://www.ci.east-palo-alto.ca.us/09-10budget/DEPARTMENTAL%20BUDGETS/PUBLIC%20SAFETY/PUBLIC%20SAFETY.pdf>*.

²³ See, fn. 17, *supra*.

Reviewing the City response to the 2003-2004 Grand Jury Report, the 2004-2005 Grand Jury reported that the City, as late as 2005, still had not implemented all of the Grand Jury recommendations.²⁴

As an indication of the continued crime problems, last December, the City experienced a series of shootings that left nine people wounded. Appendix, 099-100.

Despite the continued high crime rate, and continued law enforcement problems, last year the City terminated its long-standing contract with the County Sheriff's office for additional crime prevention and enforcement assistance. Appendix, 097.

Finally, in December 2008, the City Police announced additional California Highway Patrol officers would be assigned to the city for a 90-day period. Appendix, 099.

The crime and inadequate enforcement continue despite the passage of Measure C, a special tax which was to provide additional funding for fighting crime. Appendix, 101-102. Despite the continued high crime rates, the City proposed Fiscal Year 2009-2010 budget includes a *decrease* of four police officers from Fiscal Year 2008-2009.²⁵ This reduction is especially questionable where the City in the Draft Review at page 16 notes that a vulnerability in the Fiscal Year 2008-2009 budget is Police Department overtime, reflecting, among other things, under staffing of the City Police Department.

Given the continued high City crime rate, the City's admission of difficulty and sometimes inability in combating crime (as Woodland Park and its tenants experience), the the City Police Department inability to retain officers and the necessity to obtain significant assistance from outside law enforcement agencies, there is no substantial evidence to support a finding of adequate efficient crime enforcement and law enforcement services in the City in the proposed MSR.

²⁴ 2004-2005 Grand Jury Report, *available online at*:
http://www.sanmateocourt.org/grandjury/2004/reports/EPA_Police_Department_3_final.pdf.

²⁵ This reduction constitutes the *total* reduction in personnel for *all* City departments. 2009-2010 Budget, Departmental Budget Report, DB 113, *available at*,
<http://www.ci.east-palo-alto.ca.us/09-10budget/DEPARTMENTAL%20BUDGETS/PUBLIC%20SAFETY/PUBLIC%20SAFETY.pdf>.
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2. Deficient Road Maintenance

The City does not have the present capacity to serve the community with respect to maintaining the quality and safety of its streets and roads. As set forth in part in the Draft Review [p. 7], in a recent City Pavement Management Survey, only 47 percent of City roads are evaluated as “good or better” Pavement Management Survey, p. 3.²⁶ Approximately 40 percent of City streets are “poor” to “very poor” with almost 30 percent of City Streets in “very poor” condition. Pavement Management Survey, p. 3. Woodland Park’s properties have experienced lack of maintenance with potential significant safety and liability ramifications, and communicated this inadequacy to the City, specifically requesting the City take all action it can to alley the street maintenance problems in the City. Appendix, 103-104.

Although the Draft Review acknowledges the deficient street maintenance, and recites the Pavement Management Survey recommendation that the City needs to spend \$15.7 million in pavement maintenance and rehabilitation in the next five years, it should be supplemented to describe *how* the City will or proposes to actually pay for this necessary expenditure [Draft Review, p. 7] or if it cannot, what the governmental alternatives are for providing those services.

Further evidentiary review confirms this inadequacy. In response to acknowledged road maintenance problems, the City approved outlay for street repair in April 2008 which one Councilmember claimed would *not* address some of the worst streets in the City. Appendix, 105. The decision not to bring up all the streets for repair, including some of the worst, was made despite reports that the City had a budget surplus at the end of the Fiscal Year 2007-2008 of over \$800,000.00. Appendix, 104. Now of course, the continued State and nationwide financial crisis, as the Draft Review acknowledges, will undermine the City’s ability to maintain service levels in general, much less bring the City streets to an acceptable level of repair and periodic maintenance.

Indeed, this additional undermining of the City’s ability to provide services now appears to becoming true. In the Governor’s May Budget Revision, it is proposed that of almost \$1 billion in city and county shares of revenues in the Highway Users Tax Account (“HUTA”) be seized from the motor fuel tax to fund past and future State highway bond debt

²⁶ The Pavement Management Survey, Executive Survey is available online at:
<http://www.ci.east-palo-alto.ca.us/publicworks/EPAPMPREPORT2007.pdf>.
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service payments out of the general fund.²⁷ The City's potential revenue loss for Fiscal Year 2009-2010, of these funds that are used to maintain City streets would be \$558,696 (and another \$419,022 for Fiscal Year 2010-2011).²⁸ This proposal has now been adopted by the State Budget Committee.²⁹ Yet the City fails to recognize this very real additional funding threat to its street maintenance capability in its Budgeting function. Indeed, a review of the City Council Agendas and the City proposed 2009-2010 Budget since the Governor's announcement in May of this potential tax transfer reveals that the City has failed to acknowledge this potential revenue loss in its Draft Budget,³⁰ much less prepare contingencies for this potential loss, which in and of itself is a failure of governance. This reality of City fiscal uncertainty should be set forth in more detail in the final MSR.

3. Deficient Lighting Services

The City does not have the present capacity to serve the community with respect to maintaining the safe lighting of its streets. Over the last two and a half years, Woodland Park has implemented a property improvement program to address life safety, code, and security issues for their properties. In so doing, Woodland Park discovered that within the

²⁷ See, League of California Cities, June 12, 2009 memorandum re: Sample Resolution RE: Litigation Over Unconstitutional Diversion of Local Share of Motor Fuel (Gas) Tax. Appendix, 107-109

²⁸ See, California Local Government Finance Almanac, Highway Users Tax(1) - Projected FY2009-10 Revenues, *available at*: <http://www.californiacityfinance.com/HUTAprojFY10.pdf>. The City proposed budget for 2009-2010 lists the planned revenue from HUTA as \$578,200, but fails to acknowledge these funds are at risk. 2009-2010 Budget, Summary Information, p. SI-10, *available at*, <http://www.ci.east-palo-alto.ca.us/09-10budget/SUMMARY%20INFORMATION/SUMMARY%20INFORMATION.pdf>.

²⁹ <http://www.sen.ca.gov/budget/2009conf/2009ConfComHighlights.pdf>.

³⁰ On June 29, 2009, the City Council and Redevelopment Agency Board adopted a joint resolution of the City and Redevelopment Agency authorizing the City attorney and Redevelopment Agency Counsel to cooperate with the California Redevelopment Association, the League of California Cities, other cities and counties in litigation challenging the constitutionality of any seizure by state government of a) the city's street maintenance funds, and b) redevelopment funds. However, in discussing the City Budget at the June 29, 2009 City Council meeting, no City document reflected this reduction in revenue.

right-of-ways surrounding the affected area, current lighting levels do not meet minimum safety street lighting levels. Appendix, 110-112. Woodland Park pointed out to the City:

There are limited lighting levels and lack of lighting uniformity which create safety problems for vehicles and pedestrians. Additionally, with limited lighting levels and dark zones, illicit activities continue to be prevalent. Additional lighting has in fact been installed on private properties to try to compensate for this condition, but it does not negate the need for improved safety lighting within the public right-of-way. We have had to overcompensate with new lights on our properties to mitigate some of the worst areas. The condition of the City street lighting system impacts all properties and all residents in the neighborhood not just the properties managed by us, and we are concerned about public safety and liability.

Appendix, 111. To attempt to alleviate the lighting problems, Woodland Park met numerous times with various City officials, and developed a Conceptual Street Lighting Plans for the City's roadways west of US. Highway 101, to work cooperatively with the City, to address the lighting issues, including submission of an application for an encroachment permit to make lighting improvements at Woodland Park's own expense. Appendix, 111-112. Despite these efforts, the City has yet to approve of or submit comments for the revision of these lighting plans, leaving the rights-of-way surrounding the properties Woodland Park manages without sufficient an safe lighting.³¹

Thus, substantial evidence indicates that the City *is not providing* presently adequate public street lighting service with respect to the public rights-of-way in and surrounding the

³¹ The City's failure to respond to these lighting improvement proposals conflicts with the City General Plan Safety Element, Safety Plan, which sets forth proper lighting as a way to reduce crime:

When property owners present development proposals, the City will encourage the use of defensible space *and lighting concepts to deter on-site crime.*

General Plan, Safety Element, p. 14 (emphasis added). The City General Plan is available online at: <http://www.ci.east-palo-alto.ca.us/planningdiv/index.html>.

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affected area.³² The Draft Review, however, currently sets forth the facts surrounding the 2005 transfer of the Ravenswood Lighting District to the City, but does not acknowledge any lighting deficiencies or potential City plans to alleviate them. Draft Review, p. 7.

4. Capacity Of Other City Services, Including Water Supply, City Vehicle Fleet, Storm Drains, Sewer System And Road Systems

The City has provided little or no information regarding the capacity, present or planned, of other City services. For example, although the Draft Review discusses water supply facilities, and a brief discussion of how to augment water supply, the City fails to give any information of the City's actual available water supply and any limits on it. Draft Review, pp. 8-11. Further the City provides no discussion of the status of the City's vehicle fleet, *i.e.*, will the City have sufficient operating vehicles to provide services? With respect to storm drains, although the Draft Review again discusses some drain infrastructure, it does not provide any discussion of the capacity, present or future of the City's storm system or sewer system. Finally, although the Draft Review discusses the poor state of the City's streets, it does not discuss the capacity of those street systems.

For all of the City services, even with respect for those areas discussed above, law enforcement, road maintenance and street lighting, the City has provided essentially no information as to the level of service, any standard against which those levels might be provided, and any commentary on the adequacy of service, in clear violation of section 56430(a)(2).³³

In light of the lack of evidence to support the findings required by Section 56430(a)(2), the Draft Review would be flawed and should be revised to reflect the actual present inadequate service capacity.

³² Neither this communication, nor the Draft Review examine the very real issue of liability to the City for dangerous conditions of public property (§ 830 *et seq.*) of which the City is on notice and has a mandatory duty to cure.

³³ The only "comparative information" on crime statistics is a comparison advanced by LAFCO Staff between the City and the City of Millbrae, a dissimilar community, at Draft Review p. 4 n.3 and p. 11.

B. FINANCIAL ABILITY TO PROVIDE SERVICES (§56430(a)(3)).

Again, the City has failed to provide evidence that it has the financial ability to provide adequate governmental services. First, the Draft Review does not explain why the City's own projected revenue from local property taxes, is approximately 18 percent *more* than what the County projects will be collected and allocated on behalf of the City for Fiscal Year 2009-2010. As the City projects \$7,556,450 in property tax revenue for Fiscal Year 2009-2010³⁴— an 18 percent shortfall would result in \$1,360,161 less than the City is projecting in its budget. Clearly such a revenue shortfall would threaten all the categories of City services, something the City has not accounted for in any submission to Commission for inclusion in the Draft Review.

Second, the Draft Review states a projected increase in City personnel costs from the Fiscal Year 2007-2008 amended budget to the adopted Fiscal Year 2008-2009 budget from \$9.6 million to \$12.0 million. Draft Review, p. 15. Those figures *do not match* the data presented in the City's proposed Fiscal Year 2009-2010 budget.³⁵

Third, the City's 2008-2009 Fiscal Year Budget indicates that it will not be able to meet its services obligations. Draft Review, p. 21. As previously noted, the City has been unable to compensate its Police officers at a rate consistent with other Bay Area local agencies. Appendix, 097. Also, as noted, the City struggles to maintain its streets and safety lighting. Even though the City reported a budget surplus in Fiscal Year 2007-2008, the service issues referenced continue to be unresolved. It can be concluded that even the Fiscal Year 2007-2009 budget surplus does not suffice to adequately fund the City's service deficiencies, especially with the continued State and nationwide financial crisis. Indeed the Draft Review indicates that City's Midyear 2008-09 budget update includes projections of a funding gap of \$300,000. Draft Review, p. 16.

³⁴ 2009-2010 Budget, Summary Information, p. SI-12, *available at*, <http://www.ci.east-palo-alto.ca.us/09-10budget/SUMMARY%20INFORMATION/SUMMARY%20INFORMATION.pdf>.

³⁵ 2009-2010 Budget, Summary Information, p. SI-13, *available at*, <http://www.ci.east-palo-alto.ca.us/09-10budget/SUMMARY%20INFORMATION/SUMMARY%20INFORMATION.pdf>.

This mid-year 2008-2009 update *inconsistently* is not reflected in the proposed 2009-2010 Budget. The City has not provided evidence that it has the present financial ability to provide adequate services now, recognizing that they have not adequately provided them in the past.³⁶

Finally, the City failed to point out for inclusion in the Draft Review, the potential impacts of State revenue transfers from the City, including the referenced proposed HUTA tax seizure and the proposed seizure of redevelopment funds, which has been approved by the State Senate Budget Committee, which if approved would approximately \$1.050 billion of funds from local agencies.³⁷

**C. STATUS OF, AND OPPORTUNITIES FOR, SHARED FACILITIES
(§ 56430(a)(4)).**

The City has not provided *any evidence* to even examine *opportunities* for shared facilities, because although the Draft Review [pp. 17-18] sets forth *existing* practices of shared facilities, instead, substantial evidence indicates that the City is *losing* opportunities

³⁶ It is also noted that that the Draft Review on page 15 references “an unstructured loan repayment from the Redevelopment Agency” that assisted in past years in covering the City’s chronic General Fund structural budget deficit and the City budget also suggests that transfers from the Redevelopment Agency to the City general fund are discretionary. and may not always be counted on to meet the budget deficits. 2009-2010 Budget, Financial Plan, FP-1, *available at*, <http://www.ci.east-palo-alto.ca.us/09-10budget/FINANCIAL%20PLAN/FINANCIAL%20PLAN.pdf>.

³⁷ *See*, Budget Conference Committee Highlights, June 17, 2009, *available at*: <http://www.sen.ca.gov/budget/2009conf/2009ConfComHighlights.pdf> and, League of California Cities online memorandum dated June 19, 2009, *available at*: http://www.cacities.org/index.jsp?displaytype=11&zone=locc§ion=&sub_sec=&tert=&story=27770. The State initially attempted to transfer local government redevelopment revenues for Fiscal Year 2008-2009 as part of a budget trailer bill (AB 1389 (2008)), but on April 30, 2009, the Sacramento Superior Court ruled it unconstitutional. *See, summary and ruling, available online at*: <http://www.calredevelop.org/AM/Template.cfm?Section=Home&CONTENTID=5443&TEMPLATE=/CM/ContentDisplay.cfm>. Again, a review of the proposed 2009-2010 City budget does not review a reference acknowledging the potential loss, nor was there inclusion of that amount by Council action at its June 29, 2009 meeting.

for shared facilities. In fact, in 2008, the City failed to renew its contract with the County Sheriff's Office for supplemental law enforcement services. Appendix, 097-98. Additionally, the City of Menlo Park has recently approved a traffic study, among whose conclusions considered recommending placing barricades on streets near the City border. Appendix, 113-114.

These actions indicate that the City's opportunities for shared facilities are decreasing as they indicate a reduction in cooperation with neighboring jurisdictions and agencies. The Draft Review should be updated to reflect this reality and prospectively what facilities could share given its inadequacies in crime prevention and law enforcement and its increasing inability to accomplish street maintenance.

D. ACCOUNTABILITY FOR COMMUNITY SERVICE NEEDS, INCLUDING GOVERNMENTAL STRUCTURE AND OPERATIONAL EFFICIENCIES (§ 56430(a)(5)).

Once again, the City has failed to provide substantial evidence supporting the Section 56430(a)(5) finding of adequate accountability for community service needs including governmental structure and operational efficiencies. The Draft Review [pp. 3-4] sets forth general information regarding the meetings of the City Council, and the information provided by the City website, but does not discuss this point any further. Additionally, the MSR does not acknowledge that the City has failed to comply with its duty of governmental transparency so that City residents and businesses, such as Woodland Park can meaningfully participate in, much less know what City business or actions are prepared.

The most essential element of governmental transparency is the Brown Act whose purpose is to facilitate public participation in local government decisions and to curb misuse of the democratic process by secret legislation by public bodies.³⁸

Regular meeting agendas of local agencies such as the City must be posted at least 72 hours before the meeting in a location that is freely accessible to the public. *See*

³⁸ *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 555.
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§ 54954.2(a).³⁹ The agenda must specify the time and location of the meeting and a "brief general description" of each item of business to be transacted or discussed. § 54954.2(a).

The City, through its Rent Control Board and Subcommittees have engaged in a pattern and practice of violating the Brown Act, including failure to post agendas for subcommittee meetings in October 27, 2007 and frequently in 2008 (including April 9, 2008 and August 27, 2008). Appendix, 115-130. Further, the City appointed new Rent Control Board members on December 16, 2008 with an insufficient agenda, that stated only "Selection of Advisory Bodies Members" failing to give an adequate description of what bodies were to receive appointments. Appendix, 131-137. These clear repeated violations of the Brown Act violate the State Constitution's mandate to ensure public participation, in this case proceedings of the City Rent Control Board. This prevention of public participation means that accountability for community service needs are hampered.

Stated differently, if meetings of City Council, Boards and Committees are not open to the public, how can the City be held accountable for the service they purport to provide to residents, property owners and businesses? If the public does not know which Board members are to be appointed how can it hold the City accountable for government structure and operational efficiencies?

The City Rent Control Board is not the only City Department to violate the Brown Act. The East Palo Alto Merchants Association, a group of City Grocers, raised in a June 2009 communication the impropriety of moving a City Planning Commission hearing on the City's first full-scale supermarket to June 11, 2009 without compliance with the Brown Act. Appendix, 138-139.

These repeated Brown Act violations result in a failure of governance-how can the public, individuals or property owners participate in a City proceeding, especially those focused on a particular individual's or business' interest, if they were unaware of matter or it has not been properly described on a given Agenda?⁴⁰

³⁹ The City in the Draft Review [p. 3] acknowledges that City Council Agendas are posted at least 72 hours prior to regular meetings, but does not analyze Brown Act compliance, which has been the subject of litigation. Appendix 115-130.

⁴⁰ Additionally, a review of the City Council meeting Agendas available online *do not* contain the required Americans With Disabilities Act of 1990 disclosures as to the manner in

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Because substantial evidence exists of a pattern and practice of Brown Act violations, hampering government accountability, the City cannot substantiate a finding that it provides adequate accountability for community service needs.

E. ANY OTHER MATTER RELATED TO EFFECTIVE OR EFFICIENT SERVICE DELIVERY, AS REQUIRED BY COMMISSION POLICY (§ 56430(a)(6)).

1. The Draft Review Should Acknowledge The Failure Of the City To Comply With Its General Plan

The MSR should state that the City has failed to implement its General Plan Safety Element due to its failure to adequately provide police services, by its failure to implement its Redevelopment Plan to alleviate crime and assist in street maintenance and that the City is in danger of failing to accomplish its mandatory Housing Element Update.

2. Requirement of General Plan Consistency and Implementation

The General Plan has been described as the “constitution for all future developments” within the city. *Families Unafraid to Uphold Rural El Dorado County v. Bd. of Supervisors* (1998) 62 Cal.App.4th 1332, 1336. “[T]he propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements.” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 570 (“*Citizens*”); § 65300.9.

The City also has a *mandatory* duty to implement its General Plan Goal and Policies. § 65103(b), (c).

LAFCO MSR analysis should contain LAFCO review of applicable local general plan policies and development proposals to ensure that LAFCO objectives for efficient development are achieved and that legal findings can be made. *General Plan Guidelines*, p. 187. The Draft Review contains no information from the City establishing that its

which persons needing assistance to attend meetings may be accommodated and assisted. § 54953.2. This failure begs the question as to how persons needing assistance because of a disability may fully participate in City government as they are guaranteed by the Brown Act. G:\460.003\LTRS\2009\Poyatos (Final).wpd

governmental services implement and are consistent with, its General and Redevelopment Plan Goals and Policies.

3. The Draft Review Fails to Indicate That the City Is Not Implementing the Issues, Goals or Policies of the City General Plan Safety Element As Required By Sections 65103(b) And (c)

i. General Plan Crime Prevention Issues, Goals and Policies.

The City General Plan, adopted in 1999, sets forth issues, related to public safety that specifically address the goal and necessity for adequate police protection, which the Safety Element addresses as a significant issue within the City. First, Safety Element, Issue 2, provides the “*Need to reduce risks attributable to human activity such as aircraft overflights, hazardous materials, fire and criminal activity*” and continues setting forth the importance of reduction of crime:

Certain human activities, such as . . . criminal actions, expose the population of East Palo Alto to risk. The risk of exposure to these hazards can be reduced to acceptable levels through *proper planning* and regulation of human activities.

General Plan, Safety Element, p. 5. To address this issue, the General Plan sets forth Goal 2.0:

Protect the community from hazards associated with . . . criminal activity.

General Plan, Safety Element, p. 5. More specifically, the Safety Element set forth Policy 2.5 to address criminal activity, which requires the City to:

Provide police protection to address criminal activity.

General Plan, Safety Element, p. 6. Following this direction, the General Plan sets forth a Safety Plan, that with respect to policing, emphasizes the importance of crime prevention:

Criminal activity is higher in East Palo Alto than in other parts of San Mateo County and has generally increased over time.

Issues facing the citizens of East Palo Alto include a high violent crime rate, and a serious crime problem among the youth in the City. Ten organized gangs are known in the surrounding area. Protecting citizens and businesses from criminal activity *is a priority in the City*. Crime prevention techniques include substantive levels of police protection and educating the public about methods to reduce criminal activity.

General Plan, Safety Element, p. 14 (emphasis added).

ii. The City's Crime Rates and Failure to Provide Adequate Law Enforcement Demonstrates The City General Plan Safety Element Goals and Policies Are Not Being Achieved.

Ten years after the General Plan's adoption, the City continues to fail to implement or meet the goals, policies and Safety Plan, as set forth, *supra*, section VII.A.1. As set forth, crime continues to be unreasonably high in the City. Although the General Plan set forth the importance of crime protection in the City, the City cannot be said to have met the policy to "Provide police protection to address criminal activity," because the MSR does not mention the City's failure to comply with the General Plan Safety Element or reconcile how LAFCO objectives for efficient development are achieved in light of the fact that the LAFCO objectives must be evaluated against the City General Plan policies. *General Plan Guidelines*, p. 187.

iii. The City's Failure to Comply With Its Redevelopment Plan Emphasizes The City's Failure to Comply With Its General Plan Safety Element Goals and Policies

As a significant portion of the affected area is located within the University Circle Redevelopment Project Area, Woodland Park has direct knowledge, as set forth in the Appendix, that the City has failed to implement its own Redevelopment Plan, through the East Palo Alto Redevelopment Agency 5 Year Implementation Plan, dated October 16, 2007 ("Redevelopment Implementation Plan" or "RIP").⁴¹ This failure to implement the

⁴¹ The RIP covers three (3) Redevelopment Project Areas in the City: 1) 1. University Circle Project ("UCI") Area; 2. Gateway/101 Corridor Project Area; and 3. Ravenswood Project Area. RIP, p. 3. In May 1999, the Redevelopment Agency amended the UCI and Gateway 101
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Redevelopment Plan, and in particular the UCI further illustrates the City's lack of compliance with its General Plan Safety Element, as the principal goal of an implementation plan is to guide an agency's redevelopment programs to help eliminate blighting influences, which in turn among other things are intended to alleviate a high crime rate in the UCI. RIP, p 3.⁴²

As noted, the RIP lists eliminating blighting influences as a principal goal, which "will create an investment environment in which private developers and property owners have the incentive and the means to redevelop their properties." RIP, p. 16. But even though the RIP notes that the UCI continues to suffer physical blighting conditions [RIP, p. 16]⁴³ and Woodland Park has made significant efforts to reduce the blighted conditions, in and around the properties that they manage and own as part of the Page Mill Properties Plan,⁴⁴ the actions of the City are actually making it difficult for Woodland Park to rehabilitate and improve their properties by illegally (as determined now by the Court in a number of hearings) interpreting the Rent Stabilization Ordinance RSO,⁴⁵ and in issuing Stop-Work

Redevelopment Plans to fiscally merge the two project areas. RIP, p. 5. Now the 2007 RIP includes as a goal the merger of the merged UCI and Gateway/101 Corridor Project areas with the Ravenswood Business District Project Area. RIP, p. 5. The RIP is available online at http://www.ci.east-palo-alto.ca.us/pdf/fiveyear/Final_5_Year_Plan_Adopted_Oct_07.pdf.

⁴² The RIP also lists a high crime rate as one of the blighting influences in the other two Redevelopment Plan areas as well. RIP, pp. 28, 39.

⁴³ The RIP sets forth on page 16.

blighting influences remain within the boundaries of the Project Area. The University Circle Project Area continues to suffer from some characteristics defined by the CRL as physical blighting conditions. These conditions include:

- Factors that prevent the economically viable use of lots,
- Underutilized properties,
- Incompatible uses, and
- Parcels of irregular shape, inadequate size and poor configuration.

⁴⁴ Appendix, 140.

⁴⁵ Appendix, 141-142.

Orders to prevent Page Mill from improving the infrastructure (paving alleys, etc.) and sending a delegation to ask CALPERS to withdraw its investment to East Palo Alto,⁴⁶ are all actions that are in *direct opposition* to the goals as set forth in the RIP. These City actions might be described as targeting Woodland Park, even though the Page Mill Properties Plan is consistent with the goals of the RIP, in that both that Page Mill Properties Plan and the RIP are aimed at eliminating blight and improving the environment, particularly the residential environment, within the UCI (as well as within the other areas in which manages properties that are not included in any currently adopted redevelopment project).

Further, the City's failure to implement long-planned redevelopment projects demonstrate the City's lack of Redevelopment Plan implementation. An example is the "Manhattan site" project, a long-planned "significant project at the corner of Manhattan Avenue and O'Connor Street" (RIP, p. 10), which was included in previous 2002 RIP program activities. RIP, p. 13. Yet, seven years after it was planned, the Manhattan site project remains underdeveloped, even though funding appears to be available for such a project. According to the 2007 Five-Year Implementation Plan, at least ten million dollars (\$10,000,000.00) is available for programs, that 20% of that, or two million, seven-hundred seven thousand, two hundred twenty-four dollars (\$2,707,224.00) is available for housing, and the remaining eight million dollars (\$8,000,000.00) should be available for programs other than affordable housing. RIP, pp. 5-6. Accordingly, although available funds exist, the City is not complying with the RIP, which leaves the blighting influences in the Redevelopment Plan un-remedied.

Additional Redevelopment Plan questions remain, for which the City has not provided answers for inclusion in the MSR, including but not limited to if the three Redevelopment Plan areas are to be merged, will this allow the City to divert money from the UCI to the other Redevelopment Plan areas, even though the RIP states that blighting remains in the UCI, including the Manhattan site project? *See generally*, Appendix, 145-148.

The clear violation of the City Redevelopment Plan through its RIP for the UCI, which fails to adequately address the blighting influences, including a high crime rate, thus further illustrates how the City has failed to comply with, or implement, its General Plan Safety Element.

⁴⁶ Appendix, 143-144.

Further, it should be noted a City Redevelopment Plan *must be* consistent with the City's General Plan. Health & Saf. Code § 33331. Accordingly, if the City interprets its Redevelopment Plan in such a way that fails to protect the City against criminal activity, a stated goal of the General Plan, then that interpretation renders the Redevelopment Plan and its RIP inconsistent with the General Plan. As noted, *any* local decision affecting land use and development depends upon consistency with the applicable general plan and its elements. *Citizens, supra*, 52 Cal.3d at 570; § 65300.9. The MSR should be amended to indicate this incompatibility so that LAFCO may reconcile how LAFCO objectives for efficient development are achieved in light of the fact that the LAFCO objectives must be evaluated against the City General Plan policies, which here are clearly not being met by the City.⁴⁷ *General Plan Guidelines*, p. 187.

4. The Draft Review Fails to Indicate That the City May Be Is Out Of Compliance With Its Mandated General Plan Housing Element Update

Section 65588(e)(2) requires that the City update (*i.e.* adopt an update to) its Housing Element by June 30, 2007, which had been extended to June 30, 2009.⁴⁸ A review of the City website shows the City's Housing Element Update in *draft* form as of June 30, 2009.

Accordingly, the City is out of compliance with its statutory requirement of the Housing Element Update. The Draft Review fails to account for, as it must, this failure to implement the Housing Element, and this additional example of failure of City Governance.

⁴⁷ Although this communication focuses on the substantial evidence regarding lack of General Plan consistency with the Safety Element and the Redevelopment Plan, the lack of adequate services in the categories otherwise discussed in this communication, including street maintenance, lighting, or other general government services indicate that findings of General Plan consistency in these categories also likely cannot be made, as the City clearly is not meeting its goals for the provision of those services.

⁴⁸ The deadline extension was requested by the Association of Bay Area Governments for all cities in San Mateo County and was granted by the Department of Housing and Community Development under Section 65584.02. *See*, http://www.hcd.ca.gov/hpd/hrc/plan/he/abag_update.pdf.
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5. The Draft Review Fails To Adequately Discuss Cost Avoidance Opportunities, And Opportunities For Rate Restructuring

The *MSR Policies*, section III requires a MSR discuss cost avoidance opportunities, and opportunities for rate restructuring. The Draft Review does not discuss cost avoidance opportunities, other than a recommendation that the City consider consolidation with the East Palo Alto Sanitary District. Other than solid waste rates [Draft Review p. 13], which are higher than those of the City of Menlo Park for the same service provided by the same private franchise, no rate information is provided in the Draft Review, and the Draft Review does not provide any analysis of means to restructure rates or to achieve rate efficiencies.

Cost avoidance should also include *different forms of governance*, such as a community service or a police protection district being formed in the affected area to allow, through adequate funding, alleviation of the currently inadequate City services.

VIII. SPHERE OF INFLUENCE AMENDMENT

The Draft Review impliedly supports the premise that the City SOI should stay the same⁴⁹, in that it repeatedly states that the SOI is coterminous with City boundaries and there are no unincorporated lands eligible for annexation to the City. *See, e.g.*, Draft Review, pp. 3, 19.

As established earlier,⁵⁰ LAFCOs, however, *must consider, alternatives to the existing SOI*. Woodland Park, respectfully submits that given the substantial evidence illustrating a complete inability of the City to provide City services, including but not limited to, crime prevention and law enforcement, street maintenance, and street lighting, LAFCO should consider the option of reducing the City SOI to remove the affected area, allowing the formation of the community services district (§61100 et seq.) and/or a police protection district (Health & Safety Code section 20000 et seq.) to directly address inadequate law enforcement and street maintenance deficiencies or some other option that would allow Woodland Park and other local citizens and property owners, to fund and receive contract services, such as law enforcement assistance from the City of Menlo Park and the County

⁴⁹ This recommendation is sometimes referred to as “zero sphere” in LAFCO actions generally.

⁵⁰ See, Section IV.A., *supra*.

Sheriff's Office. The Draft Review currently contains no SOI amendments which, in turn would allow such alternatives.

To the extent that further comments will be solicited on a potential SOI amendment, Woodland Park respectfully requests notice and the opportunity to present further comments on such an amendment.

IX. CONCLUSION

Although Woodland Park acknowledges the hard work of the LAFCO Executive Officer in preparing the Draft Review, the City has failed to provide the Executive Officer sufficient information necessary to make the findings required by the Act for an MSR, rendering the Draft Review insufficient.

Specifically, the City has failed to provide substantial evidence setting forth and explaining the insufficient and sometimes non-existent services including but not limited to law enforcement, street maintenance, lighting, and other government services and has failed to explain how the Commission may make a finding of General Plan compliance with respect to the City General Plan Safety Element, Redevelopment Plan and with respect to other General Plan elements setting forth goals and policies for the provision of the other government services referenced, and the non-implementation of its Housing Element Update. These informational deficiencies should be remedied in a final adopted MSR, and require a significantly more information-rich document.

Woodland Park respectfully represents that the Municipal Service Review: Fire and Emergency Medical Service Providers prepared by the Contra Costa County LAFCO as an example of a document that meets the standards for an MSR,⁵¹ including the provision for providing governmental alternative service providers, which here would take the form, at a minimum, of contracting the City SOI to allow the formation of a community services district in the affected area to address inadequate City services.

⁵¹ This MSR is available online at:

http://www.contracostalafco.org/municipal_service_reviews/fire_and_emergency_medical_services/Fire%20and%20Emergency%20MSR%20Final%20Draft_april16.pdf.

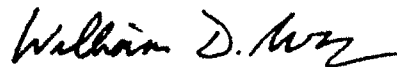
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Ms. Martha Poyatos, Executive Officer
San Mateo Local Agency Formation Commission
June 30, 2009
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Woodland Park reserves the right to offer additional evidence and argument so that there may be a legally adequate City MSR.

Thank you for your consideration of these comments.

Very truly yours,

A handwritten signature in black ink, appearing to read "William D. Ross", with a stylized flourish at the end.

William D. Ross

WDR:lla

Enclosure: APPENDIX