Technical Advisory

STATE OF CALIFORNIA
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SENATE BILL 244: Land Use, General Plans, and Disadvantaged Communities

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Introduction

This technical advisory is one in a series of advisories provided by the Governor's Office of Planning and Research (OPR) as a service to professional planners, land use officials, and California Environmental Quality Act (CEQA) practitioners. OPR issues technical guidance from time to time on issues that broadly affect the practice of CEQA and land use planning. This document provides guidance on implementing Senate Bill 244 (Wolk, 2011) (SB 244), a new law addressing disadvantaged unincorporated communities.

Background/Purpose of SB 244

According to legislative findings in SB 244, hundreds of unincorporated communities in California lack access to basic community infrastructure like sidewalks, safe drinking water, and adequate waste processing. These communities range from remote settlements throughout the state to neighborhoods that have been surrounded by, but are not part of, California's fast-growing cities. This lack of investment threatens residents' health and safety and fosters economic, social, and education inequality. Moreover, when this lack of attention and resources becomes standard practice, it can create a matrix of barriers that is difficult to overcome.

The purpose of SB 244 is to begin to address the complex legal, financial, and political barriers that contribute to regional inequity and infrastructure deficits within disadvantaged unincorporated communities. Including these communities in the long range planning of a city or county, as required by SB 244, will result in a more efficient delivery system of services and infrastructure including but not limited to sewer, water, and structural fire protection. In turn, investment in these services and infrastructure will result in the enhancement and protection of public health and safety for these communities.

Requirements of SB 244

Under SB 244, there are procedural requirements for both local governments and local agency formation commissions (LAFCos). These requirements are summarized and the relevant terms are defined below.

Requirements for Local Agency Formation Commissions (LAFCos)

SB 244 requires LAFCos to make determinations regarding "disadvantaged unincorporated communities," A "disadvantaged community" is defined as a community with an annual median household income that is less than 80 percent of the statewide annual median household income (Water Code Section 79505.5). Disadvantaged unincorporated communities (DUCs) are defined as "a territory that constitutes all or a portion of a "disadvantaged community" including 12 or more registered voters or some other standard as determined by the commission.

The bill affects LAFCo's operations in three areas:

1. Municipal Service Reviews (MSR) Determinations
2. Sphere of Influence (SOI) updates on or after July 1, 2012
3. Annexation approval restrictions of territory adjacent to DUCs

Municipal Service Reviews

The Cortese-Knox-Hertzberg Act of 2000 requires a local agency formation commission to develop and determine the sphere of influence of each local governmental agency in the county or other area designated by the commission. It also requires the LAFCos to prepare a municipal service review (MSR), which is a written statement of the commission's determinations with respect to the growth and population projections for the affected area and the present and planned capacity of public facilities and adequacy of public services, financial ability to provide services, opportunities for shared facilities, and accountability for community service needs.

Government Code (GC) Section 56430, as amended by SB 244, now requires LAFCos to include in the MSR a description of the "location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence." (Gov. Code, § 56430(a)(2).) The MSR must also contain specific written determinations on infrastructure needs or deficiencies related to public facilities and services, including but not limited to sewer, water, and fire protection services in any disadvantaged unincorporated communities within or contiguous to the sphere of influence of a city or special district that provides those services.

Sphere of Influence Updates

In addition to the new requirements for MSRs, GC Section 56425 also requires commissions on or after July 1, 2012, to adopt additional determinations for an update of a sphere of influence (SOI) of a city or special district that provides public facilities and services related to sewer, water, and fire protection. The commission must make determinations regarding the present and probable need for those public facilities and services in any DUCs within the existing sphere of influence.

CEQA Compliance for LAFCos

In order for CEQA requirements to apply to an activity, that activity must be considered a "project" under CEQA. (State CEQA Guidelines § 15378.) The main question that the

LAFCo must consider is whether its action may have a potential to cause significant environmental impacts, either directly or indirectly. Adoption of MSRs may meet this test if the action could influence future growth patterns or otherwise affect land use in a way that impacts the environment. This action may include the proposed construction of new or upgraded infrastructure for disadvantaged communities.

MSRs are intended to support SOI updates, which may include expansions or reductions in SOI boundaries, the creation of new SOIs, or SOIs amendments that trigger a need to update the pertinent SOI. In some cases, an MSR, and its required determinations including those required by SB 244, will provide policy guidance for future LAFCo decisions that may direct or affect the location and pattern of growth. Because of the nature of the analysis required, MSRs may be perceived or interpreted by some as the first step in creating, updating or amending SOIs or initiating other government organizations or reorganizations. In other cases, MSRs may actually be an integral part of a larger project. MSRs may frequently be triggered by pending applications to LAFCo for SOI amendments, or for annexations that cannot proceed without an SOI update.

To ensure compliance with CEQA, and avoid unnecessary legal challenges, OPR recommends that LAFCos consider MSRs as projects subject to CEQA where such reviews provide policy guidance regarding the location and pattern of future growth. In such cases, LAFCo would be the "lead agency" responsible for complying with CEQA because it is the entity with the principal responsibility for approving or carrying out the MSR (i.e., the project) (Public Resources Code §21067). If an MSR is prepared in conjunction with a local agency's application for an SOI update, the local agency would be the "lead agency" responsible for complying with CEQA while the LAFCo would be the "responsible agency." The lead agency, whether it is the local agency or the LAFCo, must ensure that all required elements of the CEQA review process are conducted consistent with the requirements of CEQA and their own adopted CEQA procedures.

Annexation Approval Restrictions

GC Section 56375 also imposes new restrictions on approval of city annexations greater than 10 acres, or as determined by commission policy, where there is a DUC contiguous to the area of the proposed annexation. The commission is prohibited from approving such an annexation unless an application to annex the DUC has also been filed. However, there are two exceptions to the requirement to file an application to annex a contiguous DUC:

1. An application to annex the DUC has been filed in the past five years
2. The commission finds, based upon *written evidence*, that a majority of registered voters within the affected territory are opposed to annexation.

The statute does not define the phrase "written evidence." A number of LAFCOs throughout the state have established policy that defines "written evidence." For example, both Sonoma and Tulare Counties have determined that "written evidence" may be in the form of annexation survey results.

Results from annexation surveys can vary depending on the format, content and methodology used to conduct the survey. For example, Riverside LAFCo has determined that "written evidence" can be either a petition signed by a majority of registered voters residing within the disadvantaged unincorporated community, or a scientific survey conducted by an academic institution or professional polling company. A petition or scientific survey, if not available to residents in their native language, may produce results that do not reflect true community sentiment. To effectuate the purpose of the statute, OPR recommends that LAFCOs conduct the survey in both English and the language spoken by a substantial number of non-

English speakers.[1] Furthermore, commissions should ensure that questions focus on the annexation in question.

When drafting cover letters, surveys or any additional documents pertaining to the annexation, OPR encourages commissions to use unbiased language to convey information about the proposed annexation and its potential impact on the affected community. In addition, documents used to obtain written evidence and that are distributed to the public should remain fact based, neutral and written in an accessible format that can be understood by an educationally and culturally diverse audience.

Residents and Registered Voters

SB 244 states that a required annexation can be exempted if the commission "finds, based upon written evidence, that a majority of the residents within the affected territory are opposed to annexation" (GC Section 56375(a)(8)(B)(ii)). While the statute references "residents," other relevant California Government Code sections refer to "registered voters who reside within the area" or "property owners" rather than "residents" for purposes of approving or protesting an annexation (GC Sections 57075-57090). Some local commissions have proposed policies to establish consistency between these Government Code Sections. Tulare LAFCo, for example, proposed a policy that would use" residents, registered voters, and property owners." Other commissions have also indicated using "registered voters" for purposes of written evidence, including Riverside LAFCo. In order to be consistent with current statutory protest policies, OPR recommends that commissions gather written evidence from residents, registered voters and property owners.

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1 In some contexts involving state agencies, state law defines "substantial number" to mean over 5 percent of the service population. (See, e.g., Gov. Code § 7296.2.) For additional information about federal and state requirements governing language access, see "Language Access Laws and Legal Issues: A Local Official's Guide," Institute for Local Government, 2011, available online at: http://www.ca-ilg.org/sites/main/files/file-attachments/resources_Language_Access_Guide_formatted_9-27-11_0.pdf.

Requirements for Local Governments

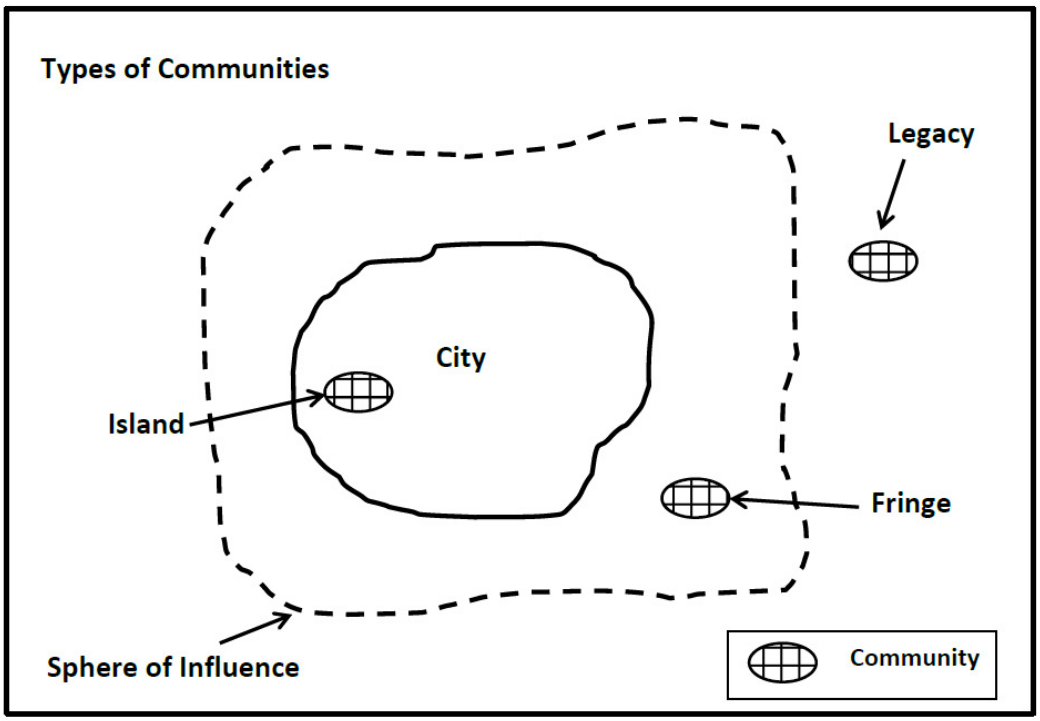
SB 244 also includes requirements for cities and counties. On or before the next adoption of its housing element, GC Section 65302.10.(a) requires that each city and county review and update the land use element of its general plan, based on available data, including, but not limited to, the data and analysis developed pursuant to Section 56430, of unincorporated island, fringe, or legacy communities inside or near its boundaries. The updated land use element shall include the following criteria. Please note that these requirements and definitions are independent of the new requirements and definitions related to the Cortese-Knox-Hertzberg Act of 2000 described above.

- Cities must identify and describe each "island community" or "fringe community," as defined, that exist within that city's sphere of influence that is a disadvantaged unincorporated community. (GC Section 65302.10.(a))
- Counties must identify and describe each legacy community, as defined, within the boundaries of a county that is a disadvantaged unincorporated community, but not including any area within the sphere of influence of a city. (GC Section 65302.10.(a))
- Cities and counties must include an analysis of water, wastewater, stormwater drainage, and structural fire protection needs or deficiencies for each of the identified communities in the land use element. (GC Section 65302.10.(a))
- Cities and counties must include an analysis in the land use element of potential funding mechanisms that could make the extension of services and facilities to identified communities financially feasible. (GC Section 65302.10.(a))

Cities and counties are not required to analyze or update their Land Use and Housing Elements as provided in SB 244 if: 1) the aforementioned communities are not present; or 2) if present, the communities are not defined as disadvantaged communities based on the analysis of the data available through the U.S. Census Bureau, Department of Finance, California Franchise Tax Board, or determined by LAFCo.

The following terms have the following meanings as they relate to the long range planning requirements of cities and counties under GC Section 65302.10 (a):

- "Community" means an inhabited area within a city or county that is comprised of no less than 10 dwellings adjacent or in close proximity to one another.
- "Disadvantaged unincorporated community" means a fringe, island, or legacy community in which the median household income is 80 percent or less than the statewide median household income.
- "Island community" means any inhabited and unincorporated territory that is surrounded or substantially surrounded by one or more cities or by one or more cities and a county boundary or the Pacific Ocean.
- "Fringe community" means any inhabited and unincorporated territory that is within a city's sphere of influence.
- "Legacy community" means a geographically isolated community that is inhabited and has existed for at least 50 years.



Local Discretion and Spirit and Intent of SB 244

While SB 244 allows some discretion for commissions to draft alternative policies such policies must be consistent with the spirit and intent of SB 244. For example, SB 244 defines "inhabited area" as an area where 12 or more registered voters reside (Government Code Section 56046). However, LAFCOs may also redefine "inhabited area" as determined by local commission policy. LAFCo policies that increase the residency threshold have the potential to eliminate many mobile home communities that are both within and beyond spheres of influence of cities and, thus, perpetuate their exclusion from planning processes and basic municipal services. For this term and other terms lacking statutory guidance, OPR recommends that any alternative definition and/or policy conform to the intent of SB244 to remedy the exclusion of communities from planning processes and critical municipal services.

Identifying Communities and Disadvantaged Unincorporated Communities

The first task in the implementation of SB 244 is the identification of communities and disadvantaged unincorporated communities. As noted above, the statute specifically refers to income, population size and special relationship to other communities in the definition of disadvantaged unincorporated communities. To fully effectuate the purpose of SB 244, however, OPR encourages local governments to review a broader range of data sources. Potential data sources are described below.

One source of data about unincorporated communities is the US Census Bureau, which calls unincorporated communities "Census Designated Places" (CDP). The US Census Bureau defines Census Designated Places as:

> *"the statistical counterparts of incorporated places, and are delineated to provide data for settled concentrations of population that are identifiable by name but are not legally incorporated under the laws of the state in which they are located.*

While the 2000 Census identified 3.6 million people in 598 CDPs, in that same year, nearly 2.8 million people lived in unincorporated areas that were not defined as CDPs but that arguably should be defined as disadvantaged unincorporated communities.[2] Therefore, while CDP data is one useful source of data, OPR suggests that local governments treat it as only one of a combination of data sources to identify and characterize disadvantaged unincorporated communities in a given area.

In addition to CDPs, OPR recommends that local government review income data generated by the Department of Finance and California Franchise Tax Board. To the extent that they have been conducted, OPR also encourages cities and counties to review income surveys developed by academic research institutions, local government agencies such as local public health departments, or community-serving not-for-profit organizations.

Along with these data sources, OPR recommends that cities and counties do additional analyses to identify specific communities within large geographic areas. Because economic data, outside of more densely populated areas, is aggregated over large geographies, it fails to pick up specific communities within the boundaries of, for example, a census tract or ZIP code. PolicyLink, in collaboration with California Rural Legal Assistance, Inc. and California Rural Legal Assistance Foundation, has developed a methodology that employs a parcel density analysis, in combination with economic data to identify specific communities that would otherwise be masked by the data. A description of the methodology is provided in the insert on this page.

Finally, OPR recommends that local government consult with community-serving government and non-government organizations that may have knowledge about the existence of disadvantaged unincorporated communities. These organizations include: local departments of public health and health services agencies, legal service organizations, local community service providers, churches, community clinics, local research institutions, and other nonprofit organizations serving low-income communities.

Fringe, Island, and Legacy Communities

GC Section 65302.10 provides definitions of fringe, island, and legacy communities. However, certain terms within those definitions can be interpreted differently based on local context. For example, terms such as "substantially surrounded" or "close proximity" can differ greatly between rural and urban communities. Therefore, OPR recommends that, prior to identifying these communities in the land use element, cities and counties consult local LAFCo policies, if adopted, that may provided further definition.

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2 Through extensive efforts to identify and map disadvantaged communities in the San Joaquin Valley Region and in Riverside County, the Community Equity Initiative found that limiting data to CDPs fails to capture many, if not most, of these communities SB 244 seeks to identify and bring into the processes. (PolicyLink and California Rural Legal Assistance (2011). *Community Equity Initiative: A Collaborative for Change.*) *http://www.policylink.org/atf/cf/%7B97c6d565-bb43-406d-a6d5-eca3bbf35af0%7D/CEI_FINAL.PDF*

Limitations of Census Designated Places

There are a variety of reasons that the data from Census Designated Places (CDP), when used alone, does not sufficiently capture the communities SB 244 seeks to serve. First, while the US Census Bureau works hard to create CDP boundaries that reflect the reality of communities on the ground, additional analysis may be required. For example, the 2000 Census data for the CDP of Fairmead in Madera County includes both the low-income community of Fairmead as well as a neighboring community with a significantly higher median household income. CDP data masks this income difference. Another challenge with the CDP data is that as the US Census Bureau has moved the collection of economic data to the American Community Survey, the margin of error has become quite large. In fact, in some communities, the margin of error can be as great as the value associated with median income for the community itself. For example, for the community of Tooleville in Tulare County, the Census data between 2006 and 2010 show that the median household income is $43,977 with a margin of error estimate at +/- $101,562.

While CDP data is useful, OPR recognizes that the CDP data is limited and, therefore, recommends that it should be only one of several metrics used by local government to identify and characterize the disadvantaged unincorporated communities in a given area.

Land Use Element Update

GC Section 65302.10.(a) requires each city and county to review and update the land use element of its general plan to include an analysis of water, wastewater, stormwater drainage, and structural fire protection needs or deficiencies for each of the identified communities. This update is to be completed on or before the next adoption of its housing element.

Current OPR *General Plan Guidelines* (2003) include recommended methods pertaining to the assessment of a city or county's physical infrastructure. To analyze the service needs or deficiencies for the identified communities, OPR has identified methods from the *General Plan Guidelines* thatcorrespond with the requirements of SB 244. These recommended methods are as follows:

- Coordinate with the Local Agency Formation Commission (LAFCo) to incorporate the information contained in the Municipal Service Review into the infrastructure needs of the identified communities
- Map the location of existing infrastructure elements including, but not limited to fire stations, sewer trunk lines, and drainage systems
- Conduct an assessment of the capacity and availability of the physical infrastructure necessary to support the existing and proposed land uses in the identified community
- Consult with affected public utilities and special districts, if any, for information on the location and capacity of their facilities to determine the ability and the timing of facility expansion for infrastructure improvements for the identified community
- Review regional and state transportation, air quality, and water quality plans and

regulations to consider whether any of these plans affect the future operation and expansion of public and private facilities

The general plan circulation element is required to describe the location and extent of existing and proposed local public utilities including water and wastewater infrastructure, and stormwater drainage systems and be correlated with the land use element (GC Section 65302(b)(1)). A general plan safety element must provide for the protection of the community from any unreasonable risk associated with the effects of wildland and urban fires (GC Section 65302(g)(1)). Each element of a general plan must be internally consistent, meaning that the information and policies in each element should complement each other. Cities and counties should be aware of the requirements for each element when preparing the SB 244 analysis of water, wastewater, stormwater drainage, and structural fire protection needs or deficiencies. The analysis must be consistent with the circulation element utility information and the safety element fire protection measures.

In addition to these recommendations, OPR suggests that cities or counties consider these issues identified in the optional capital improvements/public facilities element in the General Plan Guidelines when updating the land use element. Some of these issues may overlap the recommendations previously noted and should be addressed in the LAFCo Municipal Service Reviews. These issues are as follows:

- General distribution, location, and extent of existing and proposed infrastructure
    - *Inventory existing water distribution and treatment facilities, wastewater collection and treatment facilities, and drainage facilities*
    - *Analyze the projected demand for infrastructure and facilities*
    - *Inventory the condition of existing infrastructure and analyze the estimated need for maintenance and improvements to meet the projected demand*
- General distribution, location, and extent of existing and proposed public facilities
    - *Analyze the projected demand for public facilities*
    - *Inventory the condition of existing facilities and analyze the estimated need for maintenance and improvements to meet projected demand*
- Plans of other entities that provide public services or facilities, including service capacities
    - *Collect and review capital improvements and other plans of cities and counties, public utilities, water suppliers, special districts (e.g., fire protection, wastewater treatment, etc.) and other entities that may provide services*
- Schedule or timetable for improvements, expansion, and replacement of infrastructure and facilities
    - *Identify needs of existing facilities*
    - *Estimate demand for new facilities*
    - *Review capital improvements programs, including those of other affected agencies*
- Consultation/coordination with other service providers and public utilities
    - *Contact other service providers and public utilities regarding service capacities, planned expansion, financing, and other common interests*

OPR advises that the above-listed methods for analyses and information sources be used when updating the land use element to include an analysis of public infrastructure needs or deficiencies for each of the identified communities.

Identifying Disadvantaged Unincorporated Communities

In addition to publicly accessible income data and income surveys, OPR encourages cities and counties to do additional analyses to identify specific communities within large geographic areas. Because economic data, outside of more densely populated areas, is aggregated over large geographies, it fails to identify specific communities within the boundaries of, for example, a census tract or ZIP code. PolicyLink, in collaboration with California Rural Legal Assistance, Inc. and California Rural Legal Assistance Foundation, has developed a methodology that employs a parcel density analysis, in combination with economic data to identify specific communities in the eight-county San Joaquin Valley region that would otherwise be masked by the data. The data and methodology used in this project are described below:

Community Equity Initiative (CEI) used four basic types of data to identify these places:

Unincorporated Status: Boundary shape files from cities, counties, or from the Census were used to determine unincorporated status (all areas that are not within city limits).

Parcel Density: CEI focused on identifying places that are closely settled with a large number of homes, rather than very spread out rural communities. From publicly available sources, the outlines of parcels (land subdivided into lots) were gathered and the areas with a density of at least 250 parcels per square mile were identified. This density is comparable to the density of Census Designated Places.

Low-Income Unincorporated Communities: 2000 US Census block group data was used to identify these communities. Block groups where the median household income was less than 80 percent of the median household income of the state were selected. This is a benchmark used in several state-level infrastructure funding programs that target low income communities, including the Safe Drinking Water State Revolving Fund and the Storm Water Management Program. In 2000, the median household income of the state of California was $47,493. Therefore, any Census block group with a median income of less than $37,994 was included in the analysis.

Visual Inspection & Additional Filters: Land use was mapped to filter out agricultural land. Aerial photography and Google street view were used to verify that the places highlighted by the previous analysis were indeed underserved communities. This review revealed that some communities at the edge of cities had been "low-income" agricultural fields during the 1990 Census, but have since been developed. Identified communities less than ¾ of an acre in size were also removed as they often contained only 1 or 2 houses, if any.

For a more detailed explanation of the data and methods used, please refer to the Community Equity Initiative website for technical appendices.

CEQA Compliance for Local Governments

Amending the general plan land use element, and any necessary associated elements or sections of the general plan, to comply with the requirements of SB 244 may be a "project" subject to the California Environmental Quality Act.

Each Lead Agency will need to determine if their approvals and actions associated with complying with the provisions of SB 244 are subject to CEQA and what level of CEQA analysis will be adequate. Cities that determine that there are no "island" or "fringe communities" within their sphere of influence may determine that making an associated finding is not a "project" subject to CEQA. Likewise, counties that determine that they do not contain "legacy communities" within their boundaries may determine that making the associated finding is not a project subject to CEQA.

For Lead Agencies that do identify "island," "fringe" and/or "legacy communities" and must include an analysis of water, wastewater, storm water drainage, and structural fire protection needs or deficiencies will need to determine what level of CEQA compliance is adequate for updating the land use and any other associated general plan elements that may require amendments. The level of CEQA analysis may vary depending on policies and already available information in current General Plans, analysis done in previous General Plan, Specific Plan, or other planning level CEQA documents.

Lead agencies should consider whether or not that analysis of infrastructure needs requires a discussion of growth inducing impacts. Jurisdictions that provide additional growth opportunities in and around island, fringe or legacy communities should consider the growth inducing impacts of providing infrastructure to serve existing needs as well as additional growth. Jurisdictions that are not planning for growth in or around such communities may want to "right size" the infrastructure so that only the needs of the existing communities can be met and to avoid any associated growth inducing impacts. Jurisdictions should carefully consider all aspects of providing infrastructure to such communities and provide adequate analysis of those needs in any CEQA documents.

Analysis and Listing of Potential Funding Mechanisms

The final task in the implementation of GC Section 65302.10 for cities or counties is the analysis of benefit assessment districts or other financing alternatives that could make the extension of services to identified communities financially feasible. Principal funding sources for local government infrastructure include taxes, benefit assessments, bonds, and exactions (including impact fees). For information regarding these funding sources, consult *General Plan Guidelines* (Pg 161).

In addition to the principal infrastructure funding mechanisms previously listed, there are funding opportunities for both infrastructure planning and implementation. The following discussion briefly describes some additional sources and includes a link to more information about each funding mechanism.

- *California Department of Public Health Safe Drinking Water State Revolving Fund*

  The California Department of Public Health (CDPH) provides funding through the Safe Drinking Water State Revolving Fund (SRF). The SRF provides low interest loans to fund public water system planning and infrastructure projects. Grant funding may be available to disadvantaged communities that are unable to afford loans. Emphasis is focused on projects that solve public health and significant compliance issues.

- *State Water Resources Control Board Revolving Fund Program*

  The Federal Water Pollution Control Act (Clean Water Act or CWA), as amended in 1987, established the Clean Water State Revolving Fund (CWSRF) program. The CWSRF program offers low interest financing agreements for water quality projects. Annually, the program disburses between $200 and $300 million to eligible projects. Eligible projects include, but are not limited to:

  - Wastewater treatment
  - Local sewers
  - Sewer interceptors
  - Water reclamation facilities
  - Stormwater treatment
  - Expanded use projects

- *State Water Resources Control Board Small Community Wastewater Grant Program*

  The Small Community Wastewater Grant (SCWG) Program provides grants for the planning, design, and construction of publicly-owned wastewater treatment and collection facilities to small communities (i.e., with a population of 20,000 persons, or less) with financial hardship (i.e., annual median household income [MHI] is 80 percent of the Statewide MHI, or less).

- *Department of Water Resources Integrated Regional Water Management (IRWM) Grant Program*

  Integrated Regional Water Management (IRWM) is a collaborative effort to manage all aspects of water resources in a region. IRWM crosses jurisdictional, watershed, and political boundaries; involves multiple agencies, stakeholders, individuals, and groups; and attempts to address the issues and differing perspectives of all the entities involved through mutually beneficial solutions. To access this program you must work through the IRWM that covers your region.

- *Sustainable Communities Planning Grant and Incentive Program*

  On behalf of the Strategic Growth Council (SGC), the Department of Conservation manages competitive grants to cities, counties, and designated regional agencies to promote sustainable community planning and natural resource conservation. The grant program supports development, adoption, and implementation of various planning elements. The Sustainable Communities Planning Grant Program offers a unique opportunity to improve and sustain the wise use of infrastructure and natural resources through a coordinated and collaborative approach.

- *United States Department of Agriculture Rural Development Grants and Loans*

  Grants and loans are available through the USDA for predevelopment planning, water and wastewater, and emergency water assistance.

- *Community Development Block Grant Funds*

  The Community Development Block Grant (CDBG) program is a flexible program that provides communities with resources to address a wide range of unique community development needs. Beginning in 1974, the CDBG program is one of the longest continuously run programs at HUD. The CDBG program provides annual grants on a formula basis to 1209 general units of local government and States.

Examples of Infrastructure Planning

The following are examples of infrastructure planning that have been employed by some public agencies to address disadvantaged unincorporated areas as programs in their Housing Elements. These are provided for illustrative purposes only.

- *City of Modesto Housing Element*

  The City of Modesto Housing Element was certified in July 2011 following City Council adoption on June 28, 2011. The Housing Element includes a program for ongoing coordination with Stanislaus County to address "islands," As stated in the Housing Element, there are many areas that have been developed with residences, often at urban densities, under the governance of Stanislaus County and within Modesto's Sphere of Influence. Within the five year planning period (2009-2014), the City plans to conduct ongoing coordination with Stanislaus County to address the following issues as they relate to "islands":

  - Address any property tax issues
  - Identify infrastructure upgrades and develop cost estimates for upgrading infrastructure in compliance with municipal code provisions and regulations

  The annexation of the Shackelford area (138.71 acres) was approved by Stanislaus LAFCo on February 22, 2012, and became effective on June 1, 2012.

- *Tulare County Housing Element*

  The Board of Supervisors on March 23, 2010, adopted the 2009 Tulare County Housing Element. The Housing Element includes an action program to continue to identify housing related infrastructure needs using a number of methods and sources, including, but not limited to:

  - Community needs assessments
  - Housing condition surveys
  - Public comments at community meetings
  - Redevelopment implementation plans and amendments
  - Community plans
  - Relevant information from Health and Human Service Agency, Environmental Health Services, Regional Water Quality Control Board, public utility districts, community services districts and other agencies

Tulare County has been successful planning for infrastructure improvements for disadvantaged communities. The Board of Supervisors approved an agreement with the California Department of Water Resources to accept $2 million in funding for the Tulare Lake Basin Disadvantaged Community Water Study Project. The Tulare Lake Basin includes Fresno, Kern, Kings, and Tulare Counties. The project will develop a plan that provides rural, disadvantaged communities with a safe, clean, and affordable potable water supply and effective and affordable wastewater treatments.

In addition, Tulare County is planning to replace an aging water distribution system in Seville, unincorporated community in Tulare County. In December 2011, the Tulare County Board of Supervisors approved the submittal of a grant application for Federal funding for the replacement of deteriorating distribution lines and water storage facilities in Seville. The total cost of the project is estimated to be more than $2 million. The grant application for Federal funding and an existing grant application for State funding would cover the cost of the project.

To continue this commitment to identify housing-related infrastructure needs, the County will take the following steps:

- Provide technical assistance to local service providers including Public Utility Districts, Community Services Districts, and other water and wastewater providers
- Establish infrastructure development priorities for the County

Further Information about Disadvantaged Communities

1. California Department of Water Resources Disadvantaged Communities Mapping Tool.
http://www.water.ca.gov/irwm/integregio_resourceslinks.cfm#DAC%20TOOL

2. California Rural Legal Assistance Foundation (2011).
The Human Costs of Nitrate-Contaminated Drinking Water in the San Joaquin Valley.
http://www.pacinst.org/reports/nitrate_contamination/

3. California Rural Legal Assistance Foundation and PolicyLink (2007)
Unincorporated Communities in the San Joaquin Valley: New Responses to Poverty, Inequity, and a system of Unresponsive Governance.
http://www.prrac.org/projects/fair_housing_commission/los_angeles/Colonias_CRLA_%20PolicyLink%20Framing%20Paper.pdf

4.Catarina de Albuquerque.
Report of the Special Rapporteur on the human right to safe drinking water and sanitation: Mission to the United States of America:
http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf

5. Council for Watershed Health. Disadvantaged Communities Outreach Evaluation Project (for Greater Los Angeles Region Integrated Regional Water Management Plan) webpage:
http://watershedhealth.org/programsandprojects/dac.aspx

6. InternationalHuman Rights Law Clinic, University of California, Berkeley School of Law *Human Rights at Home - The rights to housing, water, and political participation in San Joaquin Valley unincorporated communities*
http://www.law.berkeley.edu/files/IHRLC HumanRightsatHomeNovember2007FINALVERSION.pdf

7. PolicyLink and California Rural Legal Assistance (2011).
Community Equity Initiative: A Collaborative for Change.
http://www.policylink.org/atf/cf/%7B97c6d565-bb43-406d-a6d5-eca3bbf35af0%7D/CEI_FINAL.PDF

8. Self Help Enterprises for the California Partnership for the San Joaquin Valley
An Evaluation of Water Program Funding Available to Disadvantaged Communities
http://www.sjvpartnership.org/uploaded_files/WG_doc/WAT_SHE_FundProgramEval.pdf

9. Tulare County. Tulare Lake Basin Disadvantaged Community Water Study webpage:
http://www.co.tulare.ca.us/government/county_office/disadvantaged_community_grant/default.asp

OPR Resources

1. LACFos, General Plans, and City Annexations (February 2012)
This document provides a primer on Local Agency Formation Commissions (LAFCos) from a land use planning perspective. The publication addresses the city annexation process, CEQA, and local general plans.

2. OPR General Plan Guidelines (October 2003)
To assist local governments in meeting this responsibility, the Governor's Office of Planning and Research is required to adopt and periodically revise guidelines for the preparation and content of local general plans.

3. Location Maps Required for State Agencies' Review (September 2000)
CEQA Guidelines require the submittal of a suitable map along with the NOP for an EIR under Section 15082 (a) (1) (b), and in the Draft EIR itself, under Section 15124 (a).

Glossary

Annexation: the inclusion, attachment, or addition of territory to a city or district (http://www.caLAFCo.org/docs/CKH/2011_CKH_Guide.pdf)

Annexation Survey: U.S. Census Bureau conducts the Boundary and Annexation Survey (BAS) annually to collect information about selected legally defined geographic areas. The BAS is used to update information about the legal boundaries and names of all governmental units in the United States. (http://www.census.gov/geo/www/bas/bashome.html)

California Environmental Quality Act (CEQA): The California Environmental Quality Act (CEQA) generally requires state and local government agencies to inform decision makers and the public about the potential environmental impacts of proposed projects, and to reduce those environmental impacts to the extent feasible. (http://www.opr.ca.gov/m_ceqa.php)

Census Designated Place: delineated for each decennial census as the statistical counterparts of incorporated places. CDPs are delineated to provide data for settled concentrations of population that are identifiable by name but are not legally incorporated under the laws of the state in which they are located. The boundaries usually are defined in cooperation with local or tribal officials. (http://www.census.gov/geo/www/cob/pl_metadata.html)

Community: means an inhabited area within a city or county that is comprised of no less than 10 dwellings adjacent or in close proximity to one another. (GC Section 65302.10.(a))

Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000: establishes procedures for local government changes of organization, including city incorporations, annexations to a city or special district, and city and special district consolidations. (http://www.caLAFCo.org/docs/CKH/2011_CKH_Guide.pdf)

Disadvantaged Unincorporated Community: a fringe, island, or legacy community in which the median household income is 80 percent or less than the statewide median household income. (GC Section 65302.10.(a))[1]

District or Special District: 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 GC Section 56133. Includes a county service area but excludes: the state, a county, a city, a school district or a community college district, an assessment district or a special assessment district,an improvement district, a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, a permanent road division formed pursuant to Article 3 of Chapter 4 of Division 2 of the Streets and Highways Code, an air pollution control district or an air quality maintenance district, and a zone of any special district. (http://www.caLAFCo.org/docs/CKH/2011_CKH_Guide.pdf)

Fringe Community: any inhabited and unincorporated territory that is within a city's sphere of influence. (GC Section 65302.10. (a))

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1 GC Section 56033.5 defines "Disadvantaged unincorporated community" as an inhabited territory, as defined by Section 56046, or as determined by commission policy, that constituted all or a portion of a "disadvantaged community" as defined by Section 79505.5 of the Water Code (Amended by Stats.2011, Ch. 513)

Integrated Regional Water Management (IRWM): A collaborative effort to manage all aspects of water resources in a region. IRWM crosses jurisdictional, watershed, and political boundaries; involves multiple agencies, stakeholders, individuals, and groups; and attempts to address the issues and differing perspectives of all the entities involved through mutually beneficial solutions. (http:// www.water.ca.gov/irwm/index.cfm)

Island Community: any inhabited and unincorporated territory that is surrounded or substantially surrounded by one or more cities or by one or more cities and a county boundary or the Pacific Ocean. (GC Section 65302.10. (a))[2]

Land Use Element: one of seven mandatory elements of a local general plan, the land use element functions as a guide to planners, the general public and decision-makers as to the ultimate pattern of development for the city or county at build-out. (opr.ca.gov/docs/General_Plan_Guidelines_2003.pdf)

Legacy Community: a geographically isolated community that is inhabited and has existed for at least 50 years. (GC Section 65302.10. (a))

Local Agency Formation Commissions (LAFCo): LAFCos are responsible for coordinating logical and timely changes in local governmental boundaries, conducting special studies that review ways to reorganize, simplify, and streamline governmental structure and preparing a sphere of influence for each city and special district within each county. LAFCos regulate, through approval or denial, the boundary changes proposed by other public agencies or individuals. (http://www.caLAFCo.org/about.htm)

Municipal Level Services: services typically provided by cities such as fire, police, garbage collection, water, sewer, etc.

Municipal Service Review: a review of the municipal services provided in the county or other appropriate area such as a proposed incorporation area designated by LAFCo's Commission. (GC Section 56430)

Principal Infrastructure Funding Mechanisms: the principal funding sources for local government infrastructure are taxes, benefit assessments, bonds and exactions (including impact fees). (http://opr.ca.gov/docs/General_Plan_Guidelines_2003.pdf)

Sphere of Influence: a plan for the probable physical boundaries and service area of a local agency, as determined by LAFCo. (http://www.caLAFCo.org/docs/CKH/2011_CKH_Guide.pdf)

2 GC Section 56375.3(b)

Funding Matrix

The following matrix lists funding opportunities for drinking water projects. To learn more about the specific funding sources, please visit the websites of the listed State agencies for more information.

Agency	Program (year passed or created)	Funding Provided (in million $)	Funding Remaining/Available (in million $)	Limitations/Barriers on Use of Funds for Drinking Water Treatment (capital or O&M)
California Department of Public Health (CDPH)	Safe Drinking Water State Revolving Fund (SDWSRF) (1996) (grants and loans)	Generally $100–$150: Low-interest loans and some grants to support water systems with technical, managerial, and financial development and infrastructure improvements.	$130-$150 (revolving funds) (annually)	• 20 to 30% of annual federal contribution can be used for grants. The remainder must be committed to loans. • Funds can be used only for capital costs. Cannot be used for O&M • Only loans (not grants) for privately owned water systems. • Some funds available for feasibility and planning studies for eligible projects/systems. • Can only be used for Public Water Systems (not domestic wells or State Small Systems)
	Proposition 84 (2006) (grants)	$180: Small community improvements. $60: Protection and reduction of contamination of groundwater sources. $50 Matching funds for federal DWSRF $10: Emergency and urgent projects.	$0 (Over subscribed) $0 (Fully allocated) Will be fully committed with the current year grant but not yet liquidated -$7	• Funds can be used only for capital costs. Cannot be used for O&M. • Some funding available for feasibility and planning studies for eligible projects/systems. • Can only be used for Public Water Systems not domestic wells or State Small Systems • Used to address sudden unanticipated emergency situation such as fires, earthquakes and mud slides that damage critical water infrastructure. May fund short term mitigations such as hauled water.
	Proposition 50 (2002) (grants) (fully allocated)	$50: Water security for drinking water systems. $69: Community treatment facilities and monitoring programs. $105: Matching funds for federal grants for public water system infrastructure improvements.	$0 (fully allocated) $0 (fully allocated) $0 fully allocated, mostly liquidated	• Can only be used for capital costs. Cannot be used for O&M. • Can only be used for Public Water Systems not domestic wells or State Small Systems
State Water Resources Control Board (State Water Board)	Clean Water State Revolving Fund (Expanded Use Program) (CWSRF) (1987) (loans)	$200–$300 per year: Water quality protection projects, wastewater treatment, nonpoint source contamination control, and watershed management.	$50 per agency per year; can be waived	Eligible Uses: Stormwater treatment and diversion, sediment and erosion control, stream restoration, land acquisition. Drinking water treatment generally not eligible except under certain Expanded Use scenarios. Capital cost only. O&M not eligible.
	Small Community Groundwater Grants(Prop 40) (2004, amended 2007) (grants)	$9.5. Assist small disadvantaged communities (<20,000pp) with projects where the existing groundwater supply exceeds maximum contaminant levels, particularly for arsenic or nitrate	$1.4 remaining $0.3 available to encumber; $1.1 available to appropriate	$ can go to local govt or NGO. Must demonstrate financial hardship. Can only provide alternate water supply. No O&M costs. Program not currently active due to staff resource limitations
	State Water Quality Control Fund: Cleanup and Abatement Account (2009)	$10 in 2012 (varies annually): Projects to (a) clean up waste or abate its effects on waters of the state, when there is no viable responsible party, or (b) address a significant unforeseen water pollution problem (regional water boards only). Funds can be allocated to: Public Agencies, specified tribal governments, and not-for profit organizations that serve disadvantaged communities	$10, but varies.	Eligible Uses: Emergency cleanup projects; projects to clean up waste or abate its effects on waters of the state; regional water board projects to address a significant unforeseen water pollution problem. Recipient must have authority to clean up waste. Under certain circumstances this fund has been used to provide drinking water O&M for limited

Agency	Program (year passed or created)	Funding Provided (in million $)	Funding Remaining/Available (in million $)	Limitations/Barriers on Use of Funds for Drinking Water Treatment (capital or O&M)
				durations.
	Integrated Regional Water Management (IRWM) (2002) (grants) (fully allocated)	$380 (Prop 50): Planning ($15) and implementation ($365) projects related to protecting and improving water quality.	$0, fully committed	
California Department of Water Resources (DWR)	Integrated Regional Water Management (IRWM) (2002) (grants)	$600 remaining (Prop 84): Regional water planning and implementation.	~$28 (central coast projects) ~ $33 (Tulare/Kern projects)	Must be consistent with an adopted IRWM Plan and other program requirements. For capital investment only
	Contaminant treatment or removal technology pilot and demonstration studies (2002) (grants)	Up to $5 per grant	$15 million available	Eligible applicants are public water systems under the regulatory jurisdiction of CDPH and other public entities For capital investment only
	Safe Drinking Water Bond Law (Prop 81) (1988)	Up to $74 to be awarded to current priority list. $0.025 max per project	Remaining balance to be determined.	Provides funding for projects that investigate and identify alternatives for drinking water system improvements
	Drinking water disinfecting projects using UV technology and ozone treatment (2002) (grants)	$0.05 minimum, up to $5 m per grant	$19 m remaining	Eligible applicants are public water systems under the regulatory jurisdiction of CDPH For capital investment only
iBank (CA Infrastructure and Development Bank)	Infrastructure State Revolving Fund (ISRF) Program (2000) (loans)	$0.25 to $10 per project to finance water infrastructure that promotes job opportunities. Eligible projects include -construction or repair of publicly owned water supply, treatment, and distribution systems.	$52.6 million approved to date for Water Supply,Water Treatment and Distribution Applications continually accepted	Finances system capital improvements only. Must show job creation. Special loan tier for DACs was discontinued.