

2009 CALAFCO Conference
"Annexation as a Means to Preserve Open Space Lands"

Government Code Definitions of Open Space & Open Space Uses

Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000:

56059. "Open space" means any parcel or area of land or water which is substantially unimproved and devoted to an open-space use, as defined in Section 65560.

56060. "Open-space use" means any use as defined in Section 65560.

65560. (a) "Local open-space plan" is the open-space element of a county or city general plan adopted by the board or council, either as the local open-space plan or as the interim local open-space plan adopted pursuant to Section 65563.

(b) "Open-space land" is any parcel or area of land or water that is essentially unimproved and devoted to an open-space use as defined in this section, and that is designated on a local, regional or state open-space plan as any of the following:

(1) Open space for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays and estuaries; and coastal beaches, lakeshores, banks of rivers and streams, and watershed lands.

(2) Open space used for the managed production of resources, including but not limited to, forest lands, rangeland, agricultural lands and areas of economic importance for the production of food or fiber; areas required for recharge of groundwater basins; bays, estuaries, marshes, rivers and streams which are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.

(3) Open space for outdoor recreation, including but not limited to, areas of outstanding scenic, historic and cultural value; areas particularly suited for park and recreation purposes, including access to lakeshores, beaches, and rivers and streams; and areas which serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, and scenic highway corridors.

(4) Open space for public health and safety, including, but not limited to, areas which require special management or regulation

because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs and areas required for the protection and enhancement of air quality.

(5) Open space in support of the mission of military installations that comprises areas adjacent to military installations, military training routes, and underlying restricted airspace that can provide additional buffer zones to military activities and complement the resource values of the military lands.

(6) Open space for the protection of places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code.

Chapter 12.22 OPEN SPACE REGULATIONS

Sections:

- 12.22.010 Title.
- 12.22.020 Purpose of open space lands.
- 12.22.030 Classification of open space lands.
- 12.22.040 Definitions.
- 12.22.050 Rules and regulations applicable in city open space lands.
- 12.22.060 Enforcement.
- 12.22.070 Compliance with regulations required.

12.22.010 Title.

The ordinance codified in this chapter shall be known as the open space ordinance of the city of San Luis Obispo. (Ord. 1332 § 1 (part), 1998)

12.22.020 Purpose of open space lands.

A. The city of San Luis Obispo has developed a system of open space lands within and surrounding the community which is an important part of the community's setting, providing a number of opportunities for enjoyment of the natural environment by our citizens. Consistent with the open space element of the city's general plan, open space lands have been acquired (both in fee and through easements) for specific purposes, such as protection of scenic character, wildlife habitat values, passive recreation and agriculture. The open space element principles state that uses on open space lands owned or managed by the city:

1. Should preserve the natural amenities of the open space land;
2. May not include uses which would degrade or significantly impact resource preservation on-site or on an adjacent parcel;
3. May consist of the following uses provided allowed uses are compatible with the purpose of the open space land:
 - a. Conservation of soil, vegetation, water, fish, and/or wildlife.
 - b. Passive recreation, including open areas, trails, viewing stations, hiking, horseback riding, swimming, fishing, photography, painting, sketching and other similar day recreation use.
 - c. Interpretation and scientific study of the natural environment.
 - d. Grazing, farming, growing of nursery stock, gardening, and harvesting crops.
 - e. Landscape or wildlife restoration and enhancement programs where the natural landscape has been altered or degraded. Such programs may include restrictions on public access.

B. This chapter has been duly established by the city council of the city of San Luis Obispo in keeping with the principles stated above.

C. Lands acquired or otherwise controlled by the city for open space purposes are not considered to be parks (as "parks" are defined in Chapter 12.20 of the Municipal Code) and shall not be construed to be appropriate for, or used for, structured recreation, such as team sports, large gatherings or other intensive uses of the property or site.

D. These regulations shall apply to lands owned in fee or otherwise controlled by the city of San Luis Obispo, both within and outside of the city limits. (Ord. 1332 § 1 (part), 1998)

12.22.030 Classification of open space lands.

The city council shall have the authority to classify open space lands as (1) open space or (2) ecological area. "Open space" shall be utilized primarily for scenic and wildlife habitat purposes and for passive recreation. "Ecological areas" shall be primarily utilized for their

wildlife habitat or other ecological values and may be subject to restrictions upon, or prohibition of, public access. One or more contiguous open space lands may also be combined as a natural reserve, reflecting differing types of acquisition that may be involved in assembling such contiguous parcels. (Ord. 1332 § 1 (part), 1998)

12.22.040 Definitions.

The following terms are defined as follows for purposes of this chapter:

A. "Amplified sound" means music, sound wave, vibration or speech projected or transmitted by electronic equipment, including amplifiers.

B. "Director" means the director of parks and recreation or other person authorized by him or her, pursuant to law, to act in his or her stead.

C. "Climbing area" means an area within a city open space land suitable for, and designated for, climbing with the use of ropes, climbing bolts, and other specialized equipment.

D. "Open space lands" means any lands owned by the city designated as either "open space" or "ecological area," including accessories thereto maintained and operated by the city of San Luis Obispo.

E. "Permit" means written authorization for specific uses of open space lands, or portions thereof, as provided for and defined in this chapter.

F. "Vehicle" means any device by which any person or property may be propelled, moved or drawn, excepting a device moved by human power.

G. "Trail" means an improved passage for persons, animals, or vehicles, maintained in a manner to be reasonably safe for such passage for such persons, animals or vehicles, as may be appropriate.

H. "Natural reserve" means an area of one or more open space lands, which may be managed as a unit by the city or in conjunction with other agencies. (Ord. 1332 § 1 (part), 1998; prior code § 4226.1)

12.22.050 Rules and regulations applicable in city open space lands.

The following rules and regulations apply in all open space lands within or under the control of the city of San Luis Obispo, unless expressly stated otherwise elsewhere in this chapter.

A. Resources Protected. All natural and cultural resources (including, but not limited to, all naturally occurring plants and animals, prehistoric and historic artifacts, structures, and remains of structures) within city open space lands are protected, and no person shall collect, gather, or otherwise disturb any natural or cultural resources found therein, except for pruning or removal of materials in conjunction with city-sponsored activities, such as trail construction or maintenance or for collection of specimens for research or educational purposes as permitted in advance by the city.

B. Presence in Open Space Lands Restricted to Certain Hours—No Overnight Usage. Open space lands where public access is permitted shall be open to the public from dawn to dusk. It shall be unlawful to enter or remain within such lands between one hour after sunset and one hour before sunrise of the following day without approval from the director.

C. Authority to Close. Any section or part of the city's open space lands may be declared closed to the public by the director at any time and for any interval of time, either temporarily or at regular and stated intervals (daily or otherwise), and either entirely or merely to certain uses, as the director finds reasonably necessary.

D. Operation of Vehicles and Bicycles.

1. No person shall drive or otherwise operate a vehicle on city open space lands or upon surfaces other than those maintained for purposes of vehicular travel, except upon temporary parking areas as may be designated from time to time by the director. Vehicles in the service of the city while upon their official duties are exempt. The provisions of the California Vehicle Code are applicable in the city open space lands which is publicly maintained and open to the use of the public for purposes of vehicular travel. All violations of the Vehicle Code shall be enforced and prosecuted in accordance with the provisions thereof.

2. Use of bicycles on city open space lands is restricted to areas and trails designated for bicycle use.

E. Solicitation Prohibited. No person shall practice, carry on, conduct, or solicit for any occupation, business, or profession in any city open space land, or sell or offer for sale any merchandise, article, or anything whatsoever. This subsection shall not apply to any person acting pursuant to a contract with the city or under an authorization granted by the director.

F. Restrictions Upon Animals in Open Space Lands.

1. No person shall cause, permit, or allow any animal owned or possessed by him or her or any animal in his or her custody or control to be present in open space lands except:

- a. Equine animals being led or ridden under reasonable control upon any bridle paths or trails; provided, that they are designated and identified for such purposes;
- b. Equine or other animals which are hitched or fastened at a place expressly designated for such purpose;
- c. Dogs or cats when led by a cord or chain not more than six feet long;
- d. Dogs which have been specially trained and are being used by blind or disabled persons to aid and guide them in their movements;
- e. Small pets which are kept on the person of the possessor at all times;
- f. In connection with activities authorized in writing by the director;
- g. Animals in the open space for grazing purposes pursuant to an agreement approved by the city council.

2. The director may prohibit animals in certain posted areas in city open space lands in the interest of public health, safety, comfort, and welfare, or for purposes of habitat protection.

G. Duty to Care for and Control Animals. It shall be the mandatory duty of all persons owning, possessing, in control of, or otherwise responsible for a dog, a cat, or an equine animal in city open space lands to exercise proper care and control of such animal so as not to molest or menace any other person, domestic animal, wildlife, or livestock in or upon city open space lands.

H. Sound Amplifiers Prohibited.

1. The council enacts this legislation for the sole purpose of securing and promoting the public health, comfort, safety, and welfare of its citizenry, and for the proper stewardship of city open space lands. While recognizing that certain uses of sound amplifying equipment are protected by the constitutional rights of freedom of speech and assembly, the council nevertheless feels obligated to reasonably regulate the use of sound amplifying equipment in order to protect the correlative constitutional rights of the citizens of this community to privacy and freedom from the public nuisance of loud and unnecessary sound.

2. It is unlawful for any person to install, use, and operate within city open space lands a loudspeaker or any sound amplifying equipment for the purposes of giving instructions, directions, talks, addresses, and lectures, or of transmitting music to any persons or assemblages of persons in city open space lands, except by authorized law enforcement, fire department, or park and recreational personnel for public safety or other informational purposes.

I. Possession or Consumption of Alcohol Unlawful. It shall be unlawful for any person to possess or consume any alcoholic beverage in city open space lands.

J. Non-Electric Power Boats Prohibited on Laguna Lake. Any boat containing any source of power other than sails or oars, or more than one electric motor, is prohibited from operating on the lake located in the southwesterly portion of the city, adjacent to Madonna Road, Los Osos Valley Road, and Foothill Boulevard, known as Laguna Lake. This section shall not apply to any boats authorized by the council for patrol or maintenance purposes.

K. Skating and Use of Skating Equipment Prohibited in City Open Space Lands. Use of skateboards, rollerblades, or rollerskates in city open space lands is prohibited.

L. Litter and Trash. Litter shall be disposed of properly. Disposal of trash or litter within or upon city open space lands is prohibited.

M. Weapons, Paintballs, Fireworks and Fires Prohibited. Possession or discharge of weapons, firearms, paintballs, fireworks, or the building of fires is prohibited on city open space lands.

N. Climbing Only in Designated Areas and Routes—Waiver Required—Installation of New Bolts Prohibited without Authorization—Advisory Committee.

1. Rock-climbing is permitted only within specific designated areas on city open space lands. Said areas shall be identified by the director, who may also make reasonable rules concerning such use, including but not limited to requirements for waivers of liability as a condition of permission for such use.

2. No person shall set or install climbing bolts in any designated climbing area without the written approval of the director.

3. The director shall appoint a committee of persons interested in climbing to advise him or her on matters affecting designated climbing areas, including but not limited to reviewing requests for new climbing routes, inspections of climbing areas, climbing bolts installed therein, or other matters pertaining to the operation and maintenance of the area.

O. Parasailing Permitted Only in Designated Areas and with Authorization—New Areas Prohibited without Authorization—Advisory Committee.

1. Parasailing is permitted only within specific designated areas on city open space lands. Said areas shall be identified by the director, who may also make reasonable rules concerning such use, including but not limited to requirements for waivers of liability, proof of insurance, and membership in the United States Hang Gliding Association as a condition of permission for such use.

2. Participants in parasailing events must wear appropriate head protection, carry a reserve chute, and must pass an on-site ground skills test.

3. The director shall appoint a committee of persons interested in climbing to advise him or her on matters affecting parasailing or other matters pertaining to the operation and maintenance of the area.

P. Travel Generally Restricted to Designated Trails—No Trail Construction without Authorization. Travel in city open space lands is generally restricted to trails designated for such travel, and off-trail travel is prohibited in places where it is unsafe to so travel, or where such travel can result in erosion problems or resource damage. Furthermore, construction of new trails is prohibited except where authorized by the director as part of a trail improvement program for a given open space land. However, city open space lands are open to off-trail travel in areas where it is safe to do so and such travel is not damaging to the environment. (Ord. 1332 § 1 (part), 1998)

12.22.060 Enforcement.

The parks and recreation department, through its park rangers, shall have the primary responsibility for the enforcement of the provisions of this chapter. Park rangers and city police officers shall have the authority to cite individuals found to be in violation of the provisions of this chapter. In addition, other city staff involved in the maintenance and operation of city open space lands shall have the authority to enforce the provisions of this chapter. Violations under this chapter shall be designated as infractions. (Ord. 1410 § 3, 2002; Ord. 1332 § 1 (part), 1998)

12.22.070 Compliance with regulations required.

It shall be unlawful to enter or remain in any open space unless there is compliance at all times with all of the regulations set forth in this chapter applicable to such lands and all other applicable laws, ordinances, rules, and regulations. (Ord. 1332 § 1 (part), 1998)

Excerpts from Riverside LAFCO Staff Report :

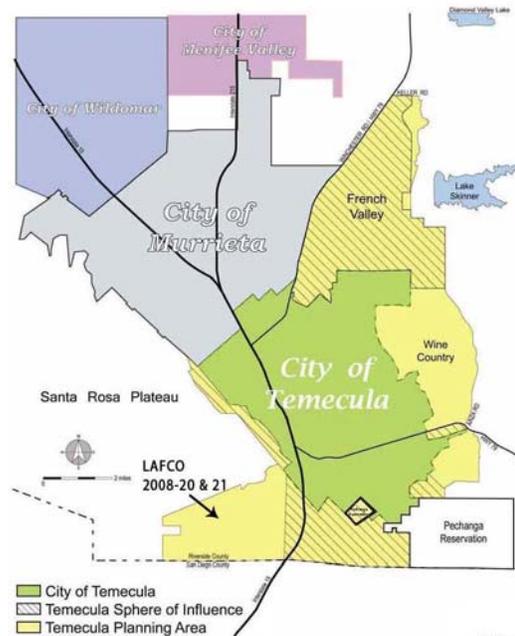
TO: Local Agency Formation Commission

FROM: George J. Spiliotis, Executive Officer
Crystal M. Craig, Local Government Analyst II
Adriana Romo, Local Government Analyst II

SUBJECT: LAFCO 2008-20-1 MUNICIPAL SERVICE REVIEW AND SPHERE OF INFLUENCE AMENDMENT (ADDITION) TO THE CITY OF TEMECULA (SANTA MARGARITA) AND THE TEMECULA COMMUNITY SERVICES DISTRICT (SUBSIDIARY) AND LAFCO 2008-21-1-REORGANIZATION TO INCLUDE ANNEXATION TO THE CITY OF TEMECULA (SANTA MARGARITA) AND THE TEMECULA COMMUNITY SERVICES DISTRICT (SUBSIDIARY) AND CONCURRENT DETACHMENTS FROM COUNTY SERVICE AREA 152 AND THE RIVERSIDE COUNTY WASTE RESOURCES MANAGEMENT DISTRICT

EXECUTIVE SUMMARY:

This report addresses an atypical proposal for a reorganization including annexation of approximately 5,000 acres of primarily vacant territory to the City of Temecula and its subsidiary Temecula Community Services District (TCSD). Approximately 4,430 acres of the annexation area is currently outside the City's SOI, therefore, a sphere amendment is also being requested. Associated with the SOI amendment is a Municipal Services Review (MSR) submitted by the City. The stated purpose of the annexation is to preserve and protect the open space and rural character of the area, which includes the Santa Margarita Ecological Reserve (SMER). Much attention has been given to a proposal submitted by Granite Construction to the County to conduct surface mining and related operations on a portion of the subject territory. Among the issues raised in the analysis are the potential conflict between open space uses and regional versus local decision making. Staff found no compelling reason to remove this territory from County jurisdiction. The staff recommendation is to disapprove the sphere of influence amendment and annexation request.



VICINITY MAP

EXISTING CONDITIONS: The subject area is comprised primarily of natural undisturbed open space, including Riverside County's portion of the Santa Margarita Ecological Reserve (SMER) and adjacent areas. The SMER encompasses approximately 4,280 acres and is managed by San Diego State University for the purposes of research, conservation and education. Several public and quasi-public entities own the land comprising the Reserve. ...

The majority of the area consists of steep hills covered with chaparral and coastal sage scrub vegetation. Scattered, sometimes massive outcroppings of granite boulders exist within the proposed boundaries, primarily in the eastern third of the site. Elevations range from approximately 500 feet to over 2,300 feet. The Santa Margarita River runs through a five-mile long canyon in the northern and western portions of the site.

Approximately 718 acres of private property are located within the approximately 5,000 acre annexation area, primarily in the southeast portion. Six single-family homes are within the proposed annexation. Two of the six are within the SMER and are sometimes used to house researchers. The dwellings are located primarily near the southerly boundary of the proposal. Primary access to the residences is through San Diego County.

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LAND USE PLANS: The majority of the annexation area, 4,284 acres, including the entire SMER is currently designated within the County General Plan as OS-CH (Open Space-Conservation Habitat). The designation includes lands conserved and managed in accordance with conservation plans, including the Multi-Species Habitat Conservation Plan (MSHCP). The County General Plan applies a land use designation of RM (Rural Mountainous) over approximately 713 acres in private ownership. The designation allows single-family residential uses with a minimum lot size of 10 acres. Within this designation there is an allowance for limited animal keeping, agriculture, recreational uses and resource development, including the extraction of mineral resources with approval of surface mining permit. ...

It should be noted that Granite Construction has submitted an application to the County of Riverside for a surface mining permit to allow a quarry operation and associated uses within the Santa Margarita Area Annexation. The proposed mining site encompasses approximately 414 acres, although proposed mining activity, including the access road, would occur on less than half that acreage. That proposal is currently going through the County's permitting process and associated CEQA analysis.

Similar to the County General Plan, the City of Temecula General Plan calls for a land use designation of OS (Open Space) for areas within SMER. ... In contrast with the County RM designation, mineral extraction is not a permitted use. ...

Both City and County land use plans would technically allow for approximately 80 single-family units within the subject area. However, due to severe constraints on public service availability, access and site topography, it is unlikely that more than a few units, if that, will ever be built, regardless of which jurisdiction the property ultimately lies.

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CONSIDERATION OF LAND USE: Rarely has a specific potential land use received such intense focus as with the subject proposal. Given that attention, it would be appropriate to review the Commission's role in land use matters.

There are two clear statutory directives related to land use provided in the Commission's governing act, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. First, the Commission must consider land use in its review of any proposal. Land use is included among the numerous, and often conflicting, mandatory factors of consideration listed in Section 56668. For city annexations, the Commission is directed to base its consideration on the general plan and rezoning of the city. When there are no specific development plans that have been made known to the city, the review must be based on the adopted city and county plans and policies.

Second, the Commission is specifically prohibited from directly regulating land use. It may not apply terms and conditions to the approval of a proposal that compel a specific land use type, density range or subdivision requirements. The exercise of these functions is reserved for general legislative bodies, such as boards of supervisors and city councils, to which the State has authorized such powers.

LAFCO's regulatory powers over boundary changes, however, do impact ultimate land uses. Although it cannot directly regulate land use or development requirements, the Commission makes de facto land use decisions. By virtue of deciding which agency and, therefore, which land use plans, will govern over affected territory, LAFCOs indirectly decide on the palette of land uses that could occur in the future. ...

The surface mining permit for Liberty Quarry is not before the Commission. However, Commission action on the annexation will impact future land use. Approval of the annexation would eliminate surface mining as a future use, based on the City's adopted land use plans. Disapproval of the annexation does not grant any right to conduct mining activities. Disapproval, however, would leave the territory unincorporated, under the land use jurisdiction of the County of Riverside, thereby preserving surface mining as a potential use of the property. If the annexation is disapproved, the surface mining permit would remain as a future discretionary action to be decided on by the Board of Supervisors.

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OPEN SPACE USES: One of the legislative charges to LAFCOs is to further the State's interests in the preservation of open space. The preservation of open space is prominently mentioned several times in LAFCO's enabling legislation, the Cortese Knox Hertzberg Act (CKH). Section 56300 makes reference to the preservation of open space as part of well-ordered efficient urban development patterns. Commission Policy implementing legislative intent clearly allows for the annexation of open space:

Objective No. 3 *Preserve open space within urban development patterns*

1.3.1 The Commission shall consider the preservation of open space lands as a valid reason for the annexation of undeveloped land.

The definition of open space uses in CKH references Government Code Section 65560, which includes a wide array of uses, listed only in part below:

(1) Open space for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays and estuaries; and coastal beaches, lakeshores, banks of rivers and streams, and watershed lands.

(2) Open space used for the managed production of resources, including but not limited to, forest lands, rangeland, agricultural lands and areas of economic importance for the production of food or fiber; areas required for recharge of groundwater basins; bays, estuaries, marshes, rivers and streams which are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.

The Section goes on to include a variety of recreational uses, sites of historical and cultural value, waterways, areas requiring special management due to hazardous conditions (e.g. flood plains and fault zones), and even open space in support of military installations.

Several of the listed open space uses are relevant to this proposal, specifically habitat, research, mineral resources, and cultural resources, as discussed below.

Much of the written testimony received speaks to the habitat value of the annexation area. Indeed, the EIR identifies approximately 180 species of wildlife and 330 plant species on the site. This diversity and the nearly undisturbed nature of most of the annexation area provides SMER with great value as a research facility. Correspondence has also pointed out that the Riverside County MSHCP identifies a mile wide, four mile long swath along the southerly County boundary as a "Special Linkage Area" used by wildlife travelling from interior mountains to the coastal ranges. This Special Linkage Area extends into the southeast corner of the annexation area, outside the SMER and encompassing the area subject to the mining application.

The Greater Temecula area is rich in cultural history of the Pechanga Tribe. As detailed in correspondence from the Tribe, the geographic area that includes the annexation "is known as the most important sacred area to the Pechanga Tribe, because it is the location of our creation and

origin." Tribal interests are served by protecting these areas as open space to preserve cultural resources.

In 2007, the State Mining and Geology Board (SMGB) reclassified approximately 290 acres within the area of the proposed Liberty Quarry as MRZ-2a for Portland Cement Concrete grade aggregate. The 2007 SMGB report, which is included in materials submitted by Granite Construction, provides a very good overview of technical and economic factors related to aggregate resources. The MRZ-2a classification indicates the demonstrated existence of significant resources. The following excerpt from the report discusses the purpose of mineral land classification:

The primary goal of mineral land classification is to ensure that the mineral resource potential of the land is recognized and considered before local land-use decisions are made that could preclude development of the mineral resource. The availability of mineral resources is vital to California's economy. However, for most mineral commodities, economic deposits are rare, isolated occurrences. In addition, access to land for purposes of mineral exploration and mine development has become increasingly difficult because California is faced with growing land-use competition. As a consequence, local planning agencies are confronted with more complex land-use decisions. If the minerals industry is to continue supplying raw materials for California, it is essential that areas containing significant mineral resources be identified so that this information can be incorporated into land-use planning decisions.

The "land-use competition" reference above was most likely made in regard to urban development. In this instance, however, we have competing open space uses. While it is physically possible for these uses to be located in proximity to each other, there are potential impacts of open space uses that could lessen the value of other open space uses. The existence of cultural resources could limit the area or operations of mineral extraction. Mining operations could impact wildlife movement and habitat. Research activities could limit recreational opportunities, and so forth. Based on the City's adopted land use regulations, the protection of open space resources would eliminate one of the potential open space uses, mineral extraction.

The City's Environmental Impact Report evaluated an alternative project scenario that included surface mining. It is not necessarily the only alternative available that could include surface mining. Public agencies with purview over land use do have regulatory discretion when acting on a permit. When approving a surface mining permit, an agency can regulate the area of extraction activity, the depth, setbacks, hours of operation, lighting, blasting operations and duration of the permit. In this way impact can be at least partially mitigated. Whether impacts can be mitigated to a satisfactory level is not known.

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LOCAL VS. REGIONAL ISSUES: Surface mining is not a popular use, not unlike landfills, jails, prisons, etc. However, like those uses, it is a necessary use that must exist somewhere. Siting such uses always proves to be a difficult decision. The agency ultimately charged with doing so must balance the regional need for those uses not only with the directly

associated impacts, but also with local residents and agencies, which are typically opposed to the existence of such uses in proximity to their communities.

While the merits of regional decision making are debated, it is hard to argue with the fact that there has been a trend toward more regional decision-making, or at least regional influence over decision making. The City points out that aggregate demand could be met through mining activity at other locations. Options presented include increased extraction at other existing mines within the County, development of mines in other locations, including other counties, and importation from Canada or Mexico. While these are viable options, they all have impacts associated with them. It is a matter of where the impacts are distributed. A regional body, such as the Board of Supervisors, represents a broad base of constituents and is better able to weigh regional needs with local and regional impacts.

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CONCLUSIONS:

One of the primary factors the Commission considers in review of most "traditional" proposals is the current adequacy of, and future need for governmental services and controls. The City of Temecula affords its residents a wide array and high level of public services. Its location and excellent management over the years has placed the City in a financial position that allows it to provide such services. This is demonstrated in both the MSR and the Plan of Services supplied by the City. This array and level of municipal services, however, with the possible exception of Park Ranger patrols benefitting SMER, is largely irrelevant to the proposed annexation. The minimal number of existing residents does not justify the extension of urban services. The applicant acknowledges that future residential development potential, even at the low densities envisioned in both the City and County General Plans, is severely constrained. Thus, neither current nor future service levels are a significant issue.

More relevant, however, is the adequacy of controls. In regards to this proposal, control over land use is the most significant issue. Is the County or the City better suited to be the land use authority exercising control? Clearly, the objective of the City in ensuring compatible open space uses is a worthy one. However, the City-adopted land use regulatory framework completely eliminates from consideration one of the open space uses that is potentially available under County regulations, that is, of course, surface mining. From a local perspective, the City has determined that mining is not an appropriate use for this site. Perhaps the quarry in its currently proposed form is unacceptable to the surrounding area. Are there suitable mitigation measures or alternatives that could render such a use reasonably compatible? Can mining activities be regulated sufficiently to cause a minimal level of impact to other nearby uses? The answers are not known nor will they be if annexation is approved. If the proposed quarry continues through the

County approval process, additional information will be developed which will allow these questions to be answered.

As noted earlier, the agency ultimately charged with siting such uses must balance the regional need for those uses not only with project impacts, but also with the desires of local constituencies. In this case, the land use agency must also weigh, after determining the impacts of the project, the relative value of various open space uses. Staff believes the appropriate agency to balance these objectives is the County. The Board of Supervisors does have a regional interest and perspective that is called for in this circumstance. Those who are opposed will continue to have the opportunity to communicate their position with the entity that will make the ultimate land use decision and should continue to take advantage of that opportunity.

The only reasons to approve the annexation are if the Commission believes surface mining in any form is not an appropriate use for the area and that such a decision is appropriately a local decision. It is the staff position that there is no compelling reason to remove the affected territory from County land use jurisdiction.

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