

2.1. POLICIES AND STANDARDS

LAFCOs are charged with establishing policies and exercising their powers “. . . in a manner that encourages and provides planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space lands within those patterns” and with “. . . the discouragement of urban sprawl and the encouragement of the orderly formation and development of local agencies based upon local conditions and circumstances.” [§§56300 and 56301]

In carrying out its responsibilities, each LAFCO must conduct studies and review and make determinations on changes of organization, reorganizations and spheres of influence (SOIs).

The following policies and standards have been adopted by the Contra Costa LAFCO to assist in the review of proposals and the preparation of studies as necessary.

A. General Policy Statement

The statutory goals of the LAFCO include the promotion of orderly growth and development by determining logical local boundaries [§56001], preservation of open space by encouraging development of vacant land within cities before annexation of vacant land adjacent to cities [§56377(b)], and preservation of prime agricultural land by guiding development away from presently undeveloped prime agricultural lands [§56377(a)].

Although LAFCO attempts to discourage urban sprawl, to preserve agricultural lands and open space, and to promote well-ordered and appropriate land use within the County, the Commission lacks authority to exercise the more specific powers that a general land use jurisdiction (county or city) can exercise when directly regulating land use density or intensity, property development or subdivision requirements [§56375(a)]. LAFCO intends that its policies promote the overall quality of life of the residents of Contra Costa County.

In considering proposals that would facilitate or lead to intensification of land uses, the Commission will consider consistency of the application with City and County general and specific plans that are relevant to the proposal or the affected territory.

The Commission will generally favor adopted plans that are supportive of the Commission’s responsibility to discourage urban sprawl, preserve open space and prime agricultural lands, provide for efficient public services and encourage the orderly formation and development of local agencies.

LAFCO will encourage proposals that enable urban development to include annexation to a city whenever reasonably possible, and discourage proposals that enable urban development without annexation to a city. LAFCO will also encourage cities to annex lands that have been developed to urban levels, particularly areas that receive city services.

While not bound by the regulations promulgated by local agencies in this County, LAFCO prefers that proponents of any boundary or SOI change demonstrate that their proposal will be consistent with such local regulations as may be relevant to the factors that LAFCO must consider pursuant to §56668.

This policy is to include, but is not limited to, the regulation of water and sewer agencies such as the East Bay Municipal Utility District and the Central Contra Costa Sanitary District.

LAFCO must also consider the impact of a proposal on the regional supply of residential housing for all income levels. LAFCO will usually encourage those applications, which improve the regional balance between housing and jobs.

B. Preferred Service Provider

The Legislature has found that a single multipurpose government agency accountable for community service needs and financial resources may be the best mechanism for establishing community service priorities, particularly in urban areas (§56001).

LAFCO shall generally consider, and approve, where appropriate and feasible, the provision of new or consolidated services in the following order of preference:

1. Annexation to an existing city.
2. Annexation to an existing multiple purpose special district.
3. Annexation to an existing single purpose special district.
4. Consolidation of existing districts.
5. Annexation to a subsidiary district or County Service Area (CSA).
6. Formation of a new CSA.
7. Incorporation of a new city.
8. Formation of a new multipurpose district.
9. Formation of a new single purpose district.

C. Indemnification Policy

LAFCO typically will tender defense of lawsuits to the real parties in interest (i.e., the proponents, and/or affected local agencies).

Upon submitting any proposal to LAFCO, applicants are required to enter into an agreement to indemnify LAFCO in the event of a legal challenge of a Commission decision.

D. Policy on Spheres of Influence and Annexations

The goals of the Contra Costa Local Agency Formation Commission include promotion of orderly growth and development by determining logical local agency boundaries [§56001], preservation of open space by encouraging development of vacant land within cities before annexation of vacant land adjacent to cities [§56377(b)], and the preservation of prime agricultural land by guiding development away from presently-undeveloped prime agricultural lands [§56377(a)].

In order to accomplish these and other goals, LAFCO is required to review and update every five years the spheres of influence (SOIs) of local agencies in Contra Costa County [§56425].

An SOI is a plan for the probable physical boundaries and service area of a local agency [§56076] and includes policies for directing growth patterns. In accordance with State law, inclusion in an SOI makes land eligible for annexation but does not assure annexation. LAFCO must consider numerous other factors when considering an annexation, reorganization or change of organization.

SOIs may be amended by the Commission. When an SOI amendment is requested, the proponent shall submit documentation to support the determinations the Commission must make pursuant to §56425(a). For a city seeking an SOI amendment, particular attention should be paid to the current land uses in the county and city, the land uses planned for the city's present SOI and the land uses proposed for territory sought to be added to the SOI. Areas to remain in agricultural and open space should be clearly specified [§§56425(a), 56377].

As a precursor to boundary changes, requests for SOI amendments should address all relevant factors of §56668. Such requests should also specify how the policies of the CKH Act will be fostered with respect to the 1) orderly formation of local agencies [§56001] and 2) preservation of open space [§56059] and prime agricultural land [§56064], both within the existing boundaries of the agency and the proposed SOI of the agency [§56377].

LAFCO discourages inclusion of land in an agency's SOI if a need for services provided by that agency within a 5-10 year period cannot be demonstrated. To demonstrate that a proposed SOI amendment is timely, an applicant should indicate expected absorption and development rates for land already in the SOI, as well as land proposed to be added.

A request to expand an SOI should designate clearly the territory that may be sought for annexation and the anticipated timeframe. An agency should propose a reduction in its SOI to remove territory that the agency does not believe will be developed within 20 years.

Territory proposed to be annexed to an agency should be within the Urban Service Area [§56080] of the agency. Related infrastructure improvements should be included in the

agency's 5-year Capital Improvement Program. Each agency expected to serve any portion of a city's SOI during the period should provide the city and LAFCO with an "intent to serve" statement. Such statements should demonstrate the reason, intent and capacity to serve the area by such evidence as resolutions of the governing boards establishing service area boundaries and ultimate service areas. The applicant shall also submit an adopted plan for financed infrastructure. [§56378].

Requests for changes of SOIs should be accompanied by summaries of the studies used to establish the SOI areas, copies of any 5-year Capital Improvement Program, and copies of any master service agreements, resolutions, or other such documentation for local agencies that may provide service to the area.

A Municipal Service review will be required prior to processing a substantial SOI amendment (§56430). LAFCO may find an SOI request inadvisable and/or premature if the Commission is unable to determine from the application that the goals of the CKH Act would be served by approving the request [§§56425, 56426, 56668, 56377, 56001].

Territory for which an annexation is proposed should be within the adopted SOI of the annexing agency. If not, an SOI amendment will be required prior to consideration of the annexation. Territory for which an annexation is proposed should be within the area shown as the 5-year SOI-Urban Service Area in the adopted SOI of the annexing agency. Annexations proposed for territory beyond the 5-year SOI-Urban Service Area usually will be denied unless overriding reasons demonstrate need for the annexation at the present time. Whenever feasible, annexation to all agencies that are expected to provide urban services to the area should be submitted at the same time.

SOIs generally will not be amended concurrently with an action on the related change of organization or reorganization. A change of organization or reorganization will not be approved solely because an area falls within the SOI of any agency.

Proponents of an annexation must demonstrate that the proposed development within the annexation area will meet the annexing jurisdiction's adopted performance standards for facilities, services and traffic and that an adopted Capital Improvement Plan will provide for these facilities.

Annexation proposals should avoid creation of "islands" or corridors of territory not served by the annexing agency, and boundaries that are not definite and certain or do not conform to lines of assessment or ownership. The Commission's approval of boundary change proposals containing split parcels will typically be subject to a condition requiring the recordation of a parcel map, lot line adjustment or other instrument to avoid creating remnants of legal lots.

Territory to be annexed by a city shall be pre-zoned by the city. A map submitted by the proponents should show all zoning designations for the territory to be annexed.

E. Island Annexation Policies

Recognizing that cities are the most logical providers of municipal services, and that unincorporated islands can be more effectively and efficiently served by surrounding cities, LAFCO is committed to the annexation of urban island areas.

LAFCO will collaborate with the County and cities in facilitating annexation of unincorporated urban islands.

LAFCO encourages the County and cities to coordinate development standards in urban island areas to facilitate the annexation of urban islands.

The Government Code contains special provisions for annexing small islands, which facilitate the annexation of islands of less than 150 acres (§56375.3).

In the interest of orderly growth and development, cities should annex urban unincorporated islands within their current SOIs before seeking to add new lands to their boundaries.

F. Policy for Evaluating Applications Requesting the Provision of Water Service for Urbanizing Areas

In addition to the factors the Commission is required to evaluate and review pursuant to §56668, the following criteria also apply to ensure greater consistency in LAFCO's decision-making process:

- 1) Any proposal for a change of organization that includes the provision of water service shall provide information sufficient to address the following: water supply, storage, treatment, distribution, and waste recovery; and to determine that adequate services, facilities, and improvements can be provided and financed by the agency responsible for the provision of such services, facilities and improvements.
- 2) Any proposal for reorganization (two or more changes of organization) will be evaluated based on each component organizational change. The Commission will then balance the overall benefits against the costs and adverse impacts in deciding on the reorganization as a whole.
- 3) In evaluating the capability of an annexing agency to provide the required service, the Commission shall take into account the agency's ability to acquire the resources necessary to provide the needed service (i.e., water rights necessary to provide the water services needed by an area proposed for annexation).
- 4) The Commission requires evidence that water service will be available. Such evidence may include, but is not limited to, the following: 1) A Plan for Service pursuant to §56653; 2) a legally binding "will serve" letter by the agency; or 3)

legally binding agreement between the developer and the agency or other service provider, or all.

- 5) The Commission may determine that a need for service exists if there is a public health or safety threat or if the area's growth patterns indicate that the area is likely to be developed for urban uses within five years provided it is designated for urban uses in the appropriate land use authority's General Plan (§56133(c)).
- 6) Lands to be annexed shall be within the adopted sphere of influence of the affected agency at the time LAFCO approves the boundary change.
- 7) The annexation must be a reasonable and logical expansion of the agency's boundaries. Further, territory to be annexed must be contiguous to the annexing agency unless otherwise provided by the principal act under which the agency operates.

G. School Capacity

In addition to the factors and determinations required by state law, LAFCO may consider whether or not the affected territory (i.e., change of organization or reorganization) can be served by affected school districts, and whether or not there is or will not be sufficient existing school capacity to serve the affected territory at the time of development.

H. Service Plans

Requests for boundary changes must include a plan for providing municipal services (§56653). This section provides guidelines to assist in the review of service plans and facilitate consistency with LAFCO's stated purposes and objectives.

1. The plan for services shall include the following information:
 - a) An enumeration and description of the services to be extended to the affected territory;
 - b) The level and range of those services;
 - c) A plan and timeline of when those services can feasibly be extended to the affected territory;
 - d) A plan for improvement, or upgrading of structures, roads, sewer or water facilities, or other conditions the local agency would impose or require within the affected territory;
 - e) A plan for how the services will be financed if the change of organization is approved; and
 - f) A description of whether the affected area is or will be proposed for inclusion within an existing improvement zone, redevelopment area, and assessment district or community facilities district.

2. The plan for services shall be prepared and submitted for all proposed changes of organization including those initiated by resolution of a local agency and those initiated by petition.
3. In the case of a proposed annexation, the plan for services should demonstrate that the range and level of services currently available within the area proposed for annexation will be maintained or exceeded by the annexing agency.
4. In the case of a proposed annexation, the plan for services should demonstrate that the cost of services to existing residents will not increase as a result of the annexation, unless a corresponding increase in the level of service also occurs.
5. The plan for services should demonstrate that proposed services will not result in any unnecessary duplication of services.
6. The plan for services should demonstrate that each service provider represents the most efficient and cost effective source of service delivery.
7. In the case of a proposed reorganization consisting of annexations to multiple agencies, the plan for services shall address each of the items specified above for each annexing agency.

I. Municipal Service Review Guidelines

- 1) Purpose - To provide guidance to the Contra Costa Local Agency Formation Commission in preparing and conducting municipal service reviews.
- 2) Background - Effective January 1, 2001, the CKH Act requires LAFCO to review municipal services. The requirement for Municipal Service Reviews (MSRs) is in response to the identified need of a more coordinated and efficient public service structure to support California's growth. The MSR provides LAFCO with a tool to comprehensively study existing and projected public service conditions and to evaluate organizational options for accommodating growth, preventing urban sprawl, and ensuring that critical services are efficiently and cost-effectively provided.
- 3) Goals and Objectives - LAFCOs are required to conduct MSRs and prepare written statements of determinations with respect to each of the following [§56430], as revised 1/1/08. The consolidated list of determinations will apply to MSRs initiated after 1/1/08.
 - (a) Growth and population projections for the affected area.
 - (b) Present and planned capacity of public facilities and adequacy of public services, including infrastructure needs or deficiencies.
 - (c) Financial ability of agencies to provide services.
 - (d) Status of, and opportunities for shared facilities.

- (e) Accountability for community service needs, including governmental structure and operational efficiencies.
- (f) Any other matter related to effective or efficient service delivery, as required by Commission policy.

The MSR process does not require LAFCO to initiate changes of organization based on service review findings; it only requires that LAFCO make determinations regarding the provision of public services per §56430. However, LAFCO, other local agencies and the public may subsequently use the information contained in the MSRs as a basis to pursue changes of organization or reorganization or sphere of influence amendments.

- 4) When Prepared - LAFCO will determine when MSRs are necessary. Generally, reviews will be prepared in conjunction with SOI studies or updates; however, MSRs may also be conducted independent of SOI updates based on a number of factors to be determined by the Commission. Such factors may include public health or safety issues, service provision issues associated with areas of potential growth or development, etc.

Minor amendments to a sphere of influence, as determined by LAFCO, will not require an MSR.

- 5) Services Addressed - MSRs will address identified services within the service review boundary of those agencies under LAFCO's jurisdiction and are associated with growth and development. Target services include, but are not limited to, water, sewer, drainage, libraries, roads, parks, police, and fire protection. General government services such as courts, social services, human resources, treasury, tax collection and administrative services will not be included.
- 6) Agencies Included - Local agencies whose boundary changes are subject to LAFCO review, or are required to have an SOI, are subject to MSRs, and LAFCO shall encourage those local agencies to fully participate in the service review process. Services provided by other agencies (i.e., federal, state, private) may be included in the service review in order to provide a comprehensive overview of service and provide context.
- 7) Boundaries - LAFCO will determine the geographic boundaries and agencies that will be the subject of an MSR. Factors that may be considered in determining a service review boundary include, but are not limited to, existing city and special district jurisdictional and sphere boundaries; topography; geography; community boundaries; tax/assessment zones; infrastructure locations; transportation systems and roads; areas with shared facilities; areas with shared social and economic communities of interest; plus other factors as determined by LAFCO.

Generally, service reviews will be conducted for sub-regional areas within the County; however, a service review may be prepared for a single agency, multiple agencies, or on a countywide basis. An MSR may review services outside Contra

Costa County, in conjunction with multi-county service providers (e.g., Dublin San Ramon Services District, East Bay Municipal Utility District, East Bay Regional Park District). Multi-county MSR will be prepared by the LAFCO of the principal county (§56066). Inter-agency coordination is encouraged.

- 8) Environmental Determination - The California Environmental Quality Act (CEQA) encourages the consideration of multiple related actions where appropriate. Whenever possible, LAFCO will work to streamline the MSR process by a) integrating SOI proposal processing and related CEQA processes with the MSR process; b) placing high priority on reviews of services affected by pending or anticipated proposals; c) working with city and county planners to identify areas where the short-term conduct of service reviews is needed to support orderly growth and development; and d) requesting that technical information needed for service reviews be included in the General, Specific and Master Service Plans of land use agencies and special districts.

Most MSRs will qualify for Categorical or Statutory Exemption under CEQA, as they are studies and are not typically accompanied by specific development proposals. Subsequent SOI actions may require additional environmental review.

- 9) Types of Service Reviews - Municipal Service Reviews will fall into two general categories:

- (a) **Routine reviews** are anticipated to be uncomplicated and straightforward with few concerns about the adequacy of public services. Routine service reviews may be conducted for single agencies or for multiple agencies that provide similar services. The boundary of a routine service review may cover a sub-region, region or the County.
- (b) **Intensive reviews** are anticipated to require detailed analysis of complex and controversial issues. An intensive MSR may result from a pending LAFCO proposal, or of service provision concerns otherwise identified by LAFCO.

- 10) Preparation

- (a) The Commission will determine the priority, schedule, procedure and content for service reviews.
- (b) LAFCO staff will provide a survey/questionnaire to the affected agency(ies) identified in the service review work plan.
- (c) If needed, LAFCO may hold scoping meetings. All affected agencies, interested agencies and persons or entities requesting notice will receive a mailed notice.
- (d) LAFCO staff will review submitted MSR information, coordinate and follow-up with the affected agencies.
- (e) LAFCO will prepare or cause to be prepared a Draft MSR for circulation to affected agencies and other interested parties for review and comment.
- (f) The Draft MSR will be considered at a public hearing, at which time the Commission may accept the report with or without modifications, adopt the

required determinations, direct staff to prepare the Final MSR, and take other actions as appropriate.

- (g) The cost associated with conducting the baseline MSRs will be incorporated in the annual LAFCO budget, and will be shared by the funding agencies. Agencies requiring a separate or expedited review will be required to fund the MSR.

11) Timing

On or before January 1, 2008, and every five years thereafter, the Commission shall, as necessary, review and update every sphere of influence [§56425(g)]. MSRs will be completed, as necessary, concurrent with SOI formations, updates or substantial amendments, but not less than every five years.

- 12) Factors for Analysis - As part of its review of municipal services, LAFCO must prepare a written statement of its determination with respect to the following factors. [§56430]

Determination 1: Growth and population projections for the affected area

The efficient provision of public services is linked to an agency's ability to plan for future needs. Such factors as projected growth in and around the agency's service areas and impact of land use plans and growth patterns on service demands may be reviewed. In making a determination on growth and population projections, LAFCO may consider an agency's ability to plan for future need.

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

The present and planned capacity of public facilities and services is linked to an agency's ability to plan for future needs, including infrastructure. The term "infrastructure needs and deficiencies" refers to the status of existing and planned infrastructure and its relationship to the quality of levels of service that can or need to be provided. In making a determination on infrastructure needs or deficiencies, LAFCO may consider ways in which the agency has the ability and capacity to provide service.

Determination 3: Financial ability of agencies to provide services

LAFCOs must weigh a community's public service needs against the resources available to fund the services. In making a determination on the financial ability of an agency to provide services, LAFCO may review such factors as an agency's potential for shared financing and/or joint funding applications, cost avoidance opportunities, rate structures, and other fiscal constraints and opportunities.

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

If service providers develop strategies for sharing resources, public service costs may be reduced and service efficiencies increased. In making a determination on opportunities for shared facilities, LAFCO may consider if an agency's facilities are currently being utilized to capacity and whether efficiencies can be achieved by accommodating the facility needs of adjacent agencies.

Determination 5: Accountability for community service needs, including governmental structure and operational efficiencies

The service review may include options to provide more logical service boundaries to the benefit of customers and regional planning goals and objectives. In making a determination on government structure, LAFCO may consider possible consolidations, mergers and/or reorganizations. The service review may also consider the agency's management efficiencies in terms of operations and practices in relation to the agency's ability to meet current and future service demands.

Determination 6: Any other matter related to effective or efficient service delivery, as required by Commission policy.

J. Standards for Out-Of-Agency Service Agreements

Considerations for Approving Agreements - Annexations to cities and special districts are generally preferred for providing public services. However, there may be situations where health and safety, emergency service, or other concerns warrant out-of-agency service agreements [§56133].

Out-of-agency service agreements are typically considered when annexation is not immediately feasible, and in anticipation of a future change of organization; or in response to an existing or impending public health and safety threat as documented by the County Environmental Health Division of the Health Services Department.

- 1) Agreements Consenting to Annex – LAFCO shall adopt a standard condition for approval of an out-of-agency service agreement requiring recordation of an agreement by the landowner consenting to annexation of the territory, which agreement shall inure to future owners of the property.
- 2) Emergency Approval by Chair - The Chair may authorize cities and special districts to provide services outside of their boundaries as specified herein.
 - (a) A request and Resolution of Application is received from the affected local agency, including the requisite processing fee.
 - (b) The situation involves a public health, safety or welfare emergency as confirmed by the affected agencies.
 - (c) The Executive Officer shall provide a report to the Commission at the next LAFCO meeting of any out-of-agency service agreements that were approved.

K. Reconsideration of LAFCO Decisions

- 1) Content of requests for reconsideration - Requests for reconsideration of LAFCO resolutions making determinations are permitted pursuant to the CKH Act. Requests must be submitted in writing. The Commission will determine whether

a reconsideration request should be considered, and render a decision based on the following: [§§56383, 56895]

- The applicant meets the statutory deadline for submitting the request.
 - The request sets forth the specific modification being sought.
 - A processing fee is paid.
 - The request demonstrates that reconsideration is required to correct a procedural defect in LAFCO's earlier action.
 - Newly discovered evidence, material to the request for reconsideration and relevant to the Commission's decision on the boundary change, is available which could not, with reasonable diligence, have been discovered and produced at the time of initial LAFCO consideration.
- 2) Final Action – At the conclusion of its consideration, the Commission may approve or disapprove, with or without amendment, wholly, partially or conditionally, the request for reconsideration.

L. City Incorporations

Incorporation means the formation of a city with corporate powers.

These policies, along with the Procedures for Processing an Incorporation Proposal found in the “Procedures” section of this handbook, supplement the Governor's Office of Planning and Research “Guide to the LAFCO Process for Incorporation.” Application requirements, Certificate of Filing and timeframes, and fee requirements are described in the LAFCO Procedures for Processing an Incorporation Proposal.

The proposed incorporation should be based upon a need for services, maintenance of community identity, or controls that can best be provided by the proposed agency and in the absence of existing alternatives that could provide the service or control in a more efficient manner.

The LAFCO acts as a neutral hearing body in evaluating the merits of the proposal without having a stake in the outcome of an incorporation effort.

The following Commission policies are intended to guide unincorporated communities in pursuing incorporation, and to maximize the likelihood of forming a city, which can financially sustain itself:

General Incorporation Policies

- 1) A proposed incorporation must satisfy a demonstrated need for services, and promote the health, safety and welfare of the service community.

- 2) An incorporation proposal must define the relationship of the new city to existing agencies, including the County. The Commission will study the fiscal impacts of the incorporation proposal on existing agencies.
- 3) While State law requires that an area proposed for incorporation shall have at least 500 registered voters residing within the affected area (§56043), the Contra Costa LAFCO recommends that the area proposed for incorporation contain a minimum of 10,000 people.

Boundaries

- 1) An area proposed for incorporation must be compact and contiguous, and possess a community identity.
- 2) A proposed incorporation must not conflict with the logical expansion of adjacent governmental agencies. Incorporation proposals involving land within an existing city sphere of influence (SOI) will not be accepted for filing. If a cityhood proposal would conflict with an established city's SOI, the incorporation proponent must first request, and the Commission must approve, an SOI amendment to exclude such area, prior to consideration of the incorporation proposal.
- 3) Areas included within the proposed incorporation boundaries should consist of:
 - (a) Existing developed areas,
 - (b) Areas which are planned for development, and/or
 - (c) Areas which are planned for development supporting extensions of infrastructure, such as within the next 10 years.
- 4) Areas which should not be included within the proposed incorporation boundaries include:
 - (a) Agricultural and open space lands which are not designated for development in the future, such as within the next 10 years (§56377).
 - (b) Lands specifically designated by the County General Plan for natural resource, agriculture, or open space uses.
 - (c) Exclusions of land that would result in islands, flags peninsulas or boundary configurations that are illogical and difficult to serve.
- 5) With regard to special districts in the incorporation area:

- (a) New cities should assume jurisdiction over as many services in the incorporation area as feasible.
- (b) District territory included in an incorporation area should be detached from the district or the district dissolved, unless LAFCO determines that there is an overriding reason to retain the district.
- (c) Incorporation boundaries should be drawn so that community based special districts are wholly included or excluded from the incorporation boundary, unless the Commission determines that there is a compelling reason to divide the district.
- (d) Detachment from a region-wide district which provides service to multiple communities outside the incorporation area should not be approved unless the Commission determines that there is an overriding benefit from the detachment.
- (e) All districts whose service responsibility or territory would be changes as a result of the incorporation should participate in the incorporation proceedings to mitigate negative fiscal impacts of the incorporation.

Fiscal Policies Relating to Incorporation

- 1) In approving an incorporation, the Commission must make a finding of financial feasibility. The Commission defines “financial feasibility” to mean the ability of a new city to maintain pre-incorporation service levels.
- 2) In determining feasibility, the Commission will consider only those revenues that are currently available to all general law cities. The Commission will not consider new revenues derived through special taxes or assessments, which might become available through possible actions of a future city council. The Commission will consider existing county assessments and taxes in place at the time of the incorporation in the determination of financial feasibility.
- 3) The Commission may consider an incorporation proposal which is conditioned upon the imposition of a new revenue source (e.g., assessment or tax) subject to voter approval.
- 4) All revenue estimates/projections contained in the Comprehensive Fiscal Analysis (CFA) shall be conservative.
- 5) Costs for functions that are not being directly assumed from another agency (e.g., the County) should use similarly sized cities within the nine county Bay Area as a basis for estimates. This is particularly applicable to administrative functions, salaries and benefits.
- 6) Proposition 13 allows for a maximum increase in assessed value of two percent annually for individual properties in the absence of a change in ownership. When the general rate of inflation is higher than two percent, the effect is a loss in real dollars from the existing tax base (unless the rate of turnover and property value

increases are sufficiently higher). Property tax projection methodology must take into account the potential deflation of property tax dollars.

- 7) While State law only requires an analysis of the city's first three years, the Contra Costa LAFCO requires an analysis projecting out a minimum of eight years following incorporation. This is to reflect those State subventions that represent a temporary "bump" to help new cities, to capture the fiscal status of the new city at the point when subventions "catch-up" with actual population, and to help gauge the long-term viability of the city.
- 8) In determining compliance with Government Code §56720, the Commission finds that a "reasonable reserve" is a contingency fund equal to a minimum of 10% of the projected general funds of the new city accumulated not later than three years from the effective date of the incorporation.

M. Revenue Neutrality

Any proposal that includes an incorporation should result in a similar exchange of both revenue and responsibility for service delivery among the County, the proposed city, and any other subject agencies. Further, the incorporation should not occur primarily for financial reasons. LAFCO may approve a proposal for incorporation if it finds either of the following:

- 1) The County and all of the affected agencies agree to the proposed transfer; or
- 2) The negative fiscal effect has been adequately mitigated by tax sharing agreements, lump-sum payments, payments over a fixed period of time, or any other terms and conditions pursuant to §56886.

Purpose

The purpose of the revenue neutrality policy is as follows:

- To institute a process for analysis and mitigation of the fiscal impacts of incorporation on the county that results in stable, predictable financial outcomes for both the county and the new city.
- To define the terms and budget items to be negotiated under revenue neutrality requirements of Government Code §56815.
- To mitigate potential fiscal losses to the county without making incorporation impossible for local communities ready for self-governance or precluding an adequate financial basis for new cities.
- To specify how participants in the incorporation process can develop proposed terms and conditions of incorporation that will meet revenue neutrality criteria and the standards of the Commission in making the findings required by §56815 and §56375 for approval of incorporation.

- To implement the legislative mandates for achieving revenue neutrality through a rational and predictable process for gathering information, determining the appropriate content of revenue neutrality agreements and providing for the revision of those agreements.

Procedure for Revenue Neutrality

- A draft Comprehensive Fiscal Analysis (CFA) is a prerequisite to revenue neutrality negotiations. LAFCO staff will convene a revenue neutrality negotiating committee composed of representatives of the county, representatives of incorporation proponents, and other affected agencies, as needed. LAFCO staff will attend meetings of the committee in order to facilitate discussions and compliance with this policy.
- The revenue neutrality committee will have up to 90 days to negotiate and propose terms and conditions to meet the requirements of §56815. Any proposals for terms and conditions of revenue neutrality should adhere to the standards for content described in this policy, and should include a description of the methodologies and assumptions leading up to the proposed terms and conditions. Revenue neutrality agreements should also provide criteria and a process for modification of the agreement after incorporation.
- At the conclusion of the meetings of the revenue neutrality committee or at the end of the 90-day negotiating period, the LAFCO Executive Officer will certify that agreement regarding revenue neutrality has been reached or has not been reached.
- If agreement has been reached, ratification by resolution of the County Board of Supervisors and by letter from an authorized representative of the incorporation proponents are submitted to LAFCO staff for inclusion in the CFA, staff report and recommendations.
- If no agreement regarding the proposed terms and conditions for revenue neutrality is reached within the 90-day negotiating period, LAFCO staff will draft proposed terms and conditions for use in the CFA and for recommendation to the Commission at its public hearing.

Standards

The provisions of revenue neutrality agreements negotiated pursuant to this policy shall adhere to the following standards:

- 1) Revenue neutrality agreements shall be based on the county cost and revenues for the most recent prior fiscal year, for which data are available, provided that the data are not more than one fiscal year old. Only identifiable and recurring revenues and expenditures should be evaluated for the purposes of determining revenue neutrality. Anticipated or projected revenue growth should not be included.
- 2) Expenditures for services transferred to a new city should be evaluated on a “net cost” basis. Services funded on a cost recovery basis (e.g., current planning, building inspection) are by definition, revenue neutral and need not be included in the analysis.
- 3) Costs of capital improvements are not recurring costs and need not be included in the analysis, except by agreement of the parties. **This provision is currently under review by the Commission.**
- 4) Countywide costs for regional services and administrative functions, which are required to support county governance of both incorporated and unincorporated areas, should not be included in defining services transferred to a new city.
- 5) Inflationary factors should not be included in the analysis of revenue neutrality provisions unless the resulting agreement provides for annual adjustment of mitigation payments based on actual data.
- 6) Restricted and unrestricted revenues should be evaluated separately. An agency may pay a portion of its annual revenue neutrality payment with restricted funds if both agencies agree and a legal exchange mechanism can be created.
- 7) Fees charged by the county for services to other jurisdictions (e.g., property tax administration) should be considered as an offsetting county revenue in the calculation of fiscal effects on the county.

Terms and Conditions

Terms and conditions for implementation of revenue neutrality may include provisions for tax sharing agreements, lump-sum payments, payments over a fixed period of time, modification of incorporation boundaries or any terms and conditions permitted under §56886.

Duration of Fiscal Impact Mitigation

The term of mitigation payments may either be ongoing or limited to a specific number of years. Agreements that limit revenue neutrality payments should establish the terms of the payments using the following:

- 1) Determine the annual net revenue loss to the county and other affected agencies resulting from the proposed incorporation.
- 2) Determine a lump sum sufficient to yield in interest funds equal to the annual net revenue loss to the county and other affected agencies.
- 3) The duration of the mitigation payments will be calculated using the annual mitigation payment amount and inflation and discount rates by negotiation.

Method of Annual Payment

In instances in which revenue neutrality requires tax sharing or mitigation payments to the county, payment should be made as directly from the revenue source as permitted by State law.

Effective Date of Incorporation

The effective date of incorporation should be considered in revenue neutrality agreements. The effective date should be set to establish adequate initial account balances for the new city as it assumes service responsibilities, but should not otherwise conflict with the intent of fiscal neutrality.

Environmental Review of Incorporation Proposals – CEQA

Incorporations are projects subject to CEQA and require environmental review. LAFCO, as Lead Agency for an incorporation, must prepare the required documentation. The LAFCO Executive Officer is the Environmental Coordinator for LAFCO, and is responsible for the environmental review process.

N. District Latent Powers

Latent powers are those services, facilities, functions and/or powers authorized by the principal act under which the district was formed, but not currently exercised.

A proposal to provide a new or different function or class of service or the expansion of district latent powers must be made by resolution of application by the legislative body of a special district. Prior to submitting the resolution to LAFCO, the legislative body of the district shall conduct a public hearing. The resolution must include all of the information specified for a petition (§56700) and must include a plan for services pursuant to §56653. Pursuant to §56824.12, the plan for service must also include the following:

- 1) The total estimated cost to provide the new or different function or class of service;
- 2) The estimated cost of the new or different function or class of service to customers;
- 3) An identification of the existing providers and the potential fiscal impacts to the customers of the existing providers;
- 4) A plan for financing the new or different function or class of service; and
- 5) Alternatives for the establishment of the new or different function or class of service.

The Commission shall conduct a public hearing and shall review and approve or disapprove with or without amendments, wholly, partially or conditionally the proposal for the establishment of new or different function or class of service.

In approving a new or different function or class of service, LAFCO may restrict the provision of the new or different function or class of service to a geographically specific area within the district. If the Commission imposes this restriction, any subsequent extension or enlargement of the service area will be subject to LAFCO review.

There are no protest proceedings in conjunction with the establishment of a new or different function or class of service, or the extension or enlargement of the service area.