

## Volume I, Part V. SPECIFIC PROPOSAL POLICIES

### 1. General City Annexation and Detachment Policies and Standards.

- 1.1. An annexation shall not be approved if it represents an attempt to annex only revenue-producing property (§56668).
- 1.2. Annexations, not initiated by LAFCo, shall not be approved unless the annexing agency is willing to accept the annexation.
- 1.3. Where another agency is currently providing service or objects to the annexation, LAFCo will compare the proposed plan of service with alternative service plans and adopted determinations from any service reviews to determine whether the proposal is the best alternative for service.
- 1.4. The Commission shall seek to approve changes of organization that encourage and provide planned, well ordered, efficient development patterns that include the appropriate preservation and conservation of open space and prime agricultural lands within and around developed areas, and contribute to the orderly formation and development of local agencies based upon local circumstances and conditions (§56300, §56301).
- 1.5. The Commission shall consider existing zoning and prezones, general plans and other land use plans, interests and plans of unincorporated communities, SOIs and master service plans of neighboring governmental entities and recommendations and determinations from related service reviews (§56375, §56668).
- 1.6. LAFCo will only approve changes of organization that are consistent with general application policies and criteria as interpreted by the Commission, and do not worsen conditions or undermine recommendations disclosed in a service review.
- 1.7. LAFCo discourages the annexation of vacant land, or extension of urban services, unless there is a demonstrated near term (within five years) need for services.
- 1.8. LAFCo requires verification of approved development plans, such as a tentative map, specific plan, or other urban entitlements when vacant territory is proposed for annexation to a city or district.
- 1.9. Prior to annexation to a city or special district, the petitioners shall provide information demonstrating that the need for governmental services exists, the annexing agency is capable of providing service, that a plan for service exists, and that the annexation is the best alternative to provide service (§56700, §56668).
- 1.10. LAFCo will look unfavorably on projects that shift the cost of services and infrastructure benefits received to others or other service areas.

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- 1.11. A proposed annexation shall be a logical and reasonable expansion to the annexing city (§56001, §56119, §56668).
- 1.12. Pre-hearings are required for any proposal, except a special reorganization, that includes a city detachment unless the city transmits a resolution supporting the proposal. If such resolution has not been received, LAFCo shall transmit a copy of the detachment proposal to the affected city at least 21 days before the pre-hearing (§56751).
- 1.13. If the city from which a territory is proposed to be detached transmits a resolution requesting termination of the proceedings within 60 days after the pre-hearing is placed on the agenda, LAFCo shall terminate it (§56751).
- 1.14. LAFCo shall disapprove proposals that extend urban services to land subject to a Land Conservation contract or agricultural preserve unless it can be clearly demonstrated that disapproval will discourage orderly and timely urban development (§56001, §56301) and no feasible alternative exists.
- 1.15. LAFCo shall disapprove proposals including annexation of territory subject to a Williamson Act contract if any city or special district would provide facilities or services related to sewers, nonagricultural water, or streets and roads in the territory under contract unless:
  - A notice of nonrenewal has been served pursuant to §51245 and the annexing agency has agreed that no services will be provided to the territory prior to contract expiration unless they solely support contracted land uses;
  - A tentative cancellation has been approved pursuant to §51282;
  - Facilities or services provided to the contracted territory only support the continuance of contracted agricultural and open space uses;
  - The post-annexation contract administrator has adopted policies and feasible mitigation measures to ensure continuation of agricultural and other permitted uses on the site over the long term; and/or
  - The proposal encourages and provides planned, well-ordered and efficient urban development patterns that include appropriate consideration of agricultural and open space lands within these development patterns (§56856.5).

## 2. Specific City Annexation Policies and Procedures.

### Policies:

- 2.1. LAFCo promotes the timely conversion of land to urban uses and will effectuate this goal through encouraging infill development on incorporated vacant lands located adjacent to already developed areas (§56301, §56377).

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- 2.2. The fundamental policy of the Commission in considering the development status of land, located in or adjacent to an established city SOI boundary and contiguous to a city boundary, shall be that such urban development is preferred in cities. This policy is based on the fact that cities exist to provide a broader range of services than do special districts (§56001, §56425).
- 2.3. Developed lands that benefit from municipal services, and are contiguous to a city boundary, should be annexed to the city providing such services.
- 2.4. Land may not be annexed to a city unless it is contiguous to the city at the time the proposal is initiated unless the land is owned by the city, is being used for municipal purposes at the time Commission proceedings are initiated, is within the same county as the city, and does not exceed 300 acres in area (§56741, §56742, §56742.5).
- 2.5. A city shall prezone undeveloped property to be annexed before the Commission takes action on the annexation (§56375). No changes to the general plan or zoning shall be made for two years after LAFCo approves a proposal unless the annexing city determines that substantial changes have occurred that necessitate such actions (§56375(e)).
- 2.6. The city shall be the Lead Agency and LAFCo shall be the Responsible Agency, for environmental review of any prezone and related change of organization. The city shall consult with LAFCo during the CEQA process, provide a written response to LAFCo's input, and submit environmental documentation to LAFCo pursuant to PRC §15050, §15381, §15096, §15051.
- 2.7. Applications for annexation of islands subject to Williamson Act Land Conservation contracts will not be deemed complete unless a meeting to consider the proposal has been conducted by the affected city and related minutes, staff reports, or written comments are included.
- 2.8. Applications for annexation of tidelands or submerged lands owned by the State Lands Commission or its trustees will not be deemed complete unless a determination of boundaries and issues by the State Lands Commission is provided to LAFCo (§56740).
- 2.9. Detachment from districts providing services to areas being annexed to the city are to be processed simultaneously as a reorganization in compliance with government codes (§56826, §56073) and consistent with applicable SOI policies and any service review recommendations adopted by LAFCo.

### **Procedures:**

- 2.10. Proceedings for annexation to or detachment from a city may be initiated by petition or resolution of the governing body of any affected county, city or district (§56650, §56654).

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- 2.11. Petitions for city annexations shall be signed by (§56767):
- Not less than 5% of the number of registered voters residing within the territory proposed to be annexed as shown on the County Registrar of Voters' list; or
  - Not less than 5% of the number of owners of land within the territory proposed to be annexed who also own 5% of the assessed value of land within the territory as shown on the last equalized assessment role.
- 2.12. A petition for detachment of territory from a city shall be signed by either of the following (§56768):
- Not less than 25% of the registered voters residing within the territory proposed to be detached as shown on the County Registrar of Voters' list; or
  - Not less than 25% of the number of owners of land within the territory proposed to be detached who also own 25% of the assessed value of land within the territory, as shown on the last equalized assessment role.
- 2.13. At least 21 days before the adoption of the resolution, a legislative body should give mailed notice of its intention to adopt a resolution of application to the commission and to each interested agency and each subject agency. The notice shall generally describe the proposal and the affected territory.
- 2.14. If any proposal, except a special reorganization, includes a detachment from a city, and is not accompanied by an adopted resolution of support from the city from which the detachment of territory is requested, the Commission shall schedule an informational item at the next meeting for which notice can be given and transmit the proposal to the city from which the detachment of territory is requested. The city from which the detachment of territory is requested may adopt and transmit a resolution requesting termination for the proceedings within 60 days of the scheduled meeting. The detachment proceedings shall be terminated if a resolution requesting termination is received (§56751).
- 2.15. Within 10 days of receipt of a proposal for city annexation of land subject to a Williamson Act contract, LAFCo will notify the State Director of Conservation (§56753.5), request comments and place the Director on the mailing list for any meetings to consider the proposal (§56753).
- 2.16. The Commission may approve, modify, or deny the proposal consistent with all adopted policies and procedures and the CKH Act. If approved, the Commission may adopt terms and conditions for the annexation or detachment (§56122, §§56886-56890, §57135, §57300-303) *LAFCO may adopt conditions listed in §§57300-303 or in §57886.*

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- 2.17. Any resolution of approval for city annexation of land subject to a Williamson Act contract shall state whether the city shall succeed to the rights, duties, and powers of the county or exercise its options not to succeed to the contract pursuant to §51243 and §51243.5 (§56752, §56754). *In making determinations whether a city may or may not succeed to the county's contract pursuant to §§51243 and 51243.5, LAFCO shall determine that substantial evidence exists to show that the city has the option not to succeed.*
- 2.18. Annexations of islands 150 acres or less in size meeting the criteria listed in §56375.3 shall be approved by the Commission, and protest proceedings will be waived. If initiated on or after January 1, 2014, LAFCo shall make a finding regarding the value of written protests filed, but not withdrawn within 30 days after approval and do either of the following:
- (1) Terminate proceedings if written protests have been filed by 50% or more of the registered voters in territory to be annexed or
  - (2) Order the territory to be annexed without an election.
- 2.19. For the purpose of determining whether an area meets the criteria for island annexation pursuant to §56375.3, the Commission defines “substantially surrounded” to be that the proposed area must have at least two-thirds (2/3) of its perimeter (linear length of the boundary) contiguous with city boundaries.
- 2.20. A city proposing an island annexation as defined in §56375.3 shall be required to provide evidence that, in conjunction with Alameda County Planning Department or other appropriate representatives, it has provided public outreach and education on the impact of annexation within the affected island area and surrounding areas prior to the placement of the item on a Commission agenda for consideration. Such outreach/education efforts shall include, but not be limited to, providing information on the grandfathering of existing legal County uses into the city, costs to the resident/taxpayer associated with annexation, and land use determinations. Documentation of these efforts, including a copy of the written notice the city sent to all affected property owners notifying them of the proposed annexation, shall be a part of the staff report presented for consideration by the Commission.
- 2.21. If territory proposed to be annexed to a city consists of non contiguous areas and two or more distinct communities with a commonly recognized designation (General Plan, census, post office, official association, signage, etc.), and any community possesses more than 250 registered voters, protests shall be counted separately except for certain island annexations (§57078.5, §56375.3).

### 3. Specific Special District Annexation Policies and Procedures

#### Policies:

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- 3.1. The annexation must provide for the most efficient delivery of services. The most efficient services are those provided at the lowest cost and highest service level. In the case of similar providers with the same level of service, the one that delivers the same service at the lowest cost will be considered to be most efficient.
- 3.2. The annexation shall be modified, conditioned or disapproved if it permits the more efficient delivery of one or more services to the detriment of other services.
- 3.3. The annexing agency must demonstrate that no parcel located within the district's service boundaries will be deprived of its right to receive services if the annexation is approved (§56668).
- 3.4. The annexing agency must demonstrate that levels of service for existing and potential customers within its service boundaries will not be lowered, or costs of service increased, if the annexation is approved (§56668). If any adverse impacts may occur, the applicant or annexing agency must provide, for LAFCo consideration, a written justification for project approval despite the negative impacts.

### **Procedures:**

- 3.5. Proceedings for annexation to a special district may be initiated by petition or resolution of the governing body of any affected county, city, or district (§56650, §56654). See Volume I, Section IV, Policy 1.4 for required contents.
- 3.6. A petition for annexation to a special district shall be signed by (§56864):

### **Registered voter district:**

- Not less than 25% of the registered voters residing within the territory proposed to be annexed; or
- Not less than 25% of the number of owners of land within the territory proposed to be annexed who also own 25% of the assessed value of land within the territory.

**Land owner-voter district** (a district whose principal act provides that owners of land within the district are entitled to vote):

- Not less than 25% of the number of landowners who own not less than 25% of the assessed value of land.
- 3.7. Pre-hearings are required for any proposal not filed by the annexing district/s, or accompanied by an adopted resolution of support from each special district to which annexation is proposed. LAFCo shall transmit a copy of the annexation

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proposal to the special district/s to which annexation is proposed at least 21 days before the pre-hearing. The special district/s to which annexation is proposed have 60 days to adopt and transmit a resolution requesting termination of the proceedings. LAFCo will terminate such proposals upon receipt of such resolution (§56857).

- 3.8. If the territory to be annexed is inhabited and the assessed value of the land equals  $\frac{1}{2}$  or more of the assessed value of land within the district, or the number of registered voters residing within the territory equals  $\frac{1}{2}$  or more of the registered voters residing in the district, LAFCo may condition the proposal for district wide confirmation (§56877).

### 4. Specific Special District Detachment Policies and Procedures

#### Policies:

- 4.1. The project proponent shall demonstrate that there is no longer a need for service(s) provided by the affected district/agency, and that detachment is the best alternative.
- 4.2. LAFCo will not approve a detachment proposal if it is an attempt by the petitioner to avoid paying district revenues while still receiving district service.
- 4.3. If a detachment is proposed principally to allow for some other means of providing the same service, the applicant must demonstrate that the proposal will result in an improved level of service (§56668).
- 4.4. Detachments shall not be approved if resultant boundaries are inconsistent with affected agencies' SOIs or adopted service review recommendations unless special circumstances exist.
- 4.5. SOI amendments and service reviews for districts from which land will be detached will be processed prior to, or concurrent with, any LAFCo approval of the detachment where possible.

#### Procedures:

- 4.6. Proceedings for detachment from a district may be initiated by petition or by resolution of the governing body of any affected county, city, or district (§56650).
- 4.7. Signature requirements for detachments from special districts are the same as for annexations (See 7.15 and 7.16.) (§56864).

### 5. Specific Special District Formation Policies and Procedures

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### About Formations:

**Principal Acts.** The State Legislature has adopted principal, or enabling, acts that govern special districts (§56065). A principal act lists functions that a special district may perform. Some districts are limited to performing a single function; others can perform nearly the same functions as a city. However, only cities and counties have direct land use authority.

The principal acts under which special districts are formed vary widely in terms of the type of agency formed, and formation procedures. Part V contains information on numerous principal acts. The individual, agency, or community group initiating a formation should review the Appendix to find a special district that fulfills their specific set of needs.

**Representation and Governing Boards.** Most special districts use voter-registration as the basis for representation and for election of governing boards. However, some principal acts, and some districts in rural areas, allow representation based upon land ownership. Votes in landowner districts may be allocated on the basis of assessed valuation of land (with or without regard to improvements) compared to total assessed valuation of the district. Some districts allocate voting rights based on a combination of voter and landowner provisions.

Wide variation exists in the makeup of governing boards. In some cases, elected officials of other agencies, such as cities or counties, decide matters for a special district. Such districts are called "dependent" districts and essentially exist as a subsidiary agency of the county or a city. An "independent" district has an elected board. When such boards are elected, the principal act generally provides for elections by district, elections at large, or a choice between the two. The number of permitted board members also varies widely.

**Formation Facts.** Formations may be initiated by petition of registered voters or landowners; or by resolution of a special district board, a city council, or the Board of Supervisors depending on the principal act. The principal act may limit initiation to one of the above, or allow a choice among several or all of the above. The number of required petition signatures might vary.

The area that may be included within a district upon formation or by annexation is set forth in the districts' enabling act. Districts may be allowed to include territory in two or more counties, may be required to include all of a city if it is to include any part, or may be required to include only contiguous territory. Variation is significant.

### Policies:

- 5.1. Principal acts guide formations except that LAFCo will be the conducting authority. If the principal act guiding formation is inconsistent with the CKH Act, the CKH shall be used to guide proceedings (§56100, §56859). CKH Act



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elections language supersedes Elections Code and principal act when inconsistent (§57125, §57126, §57127).

- 5.2. A proposal to form a special district shall demonstrate that a need exists for a service or control which can best be provided by a special district and that there are no other alternatives that would provide the service or control in a more efficient manner (§56668, §56001, §56301, §56886.5).
- 5.3. If need for service is clear, LAFCo shall consider a project alternative in which an existing agency may perform the function in a more efficient and accountable manner or make a determination that no such agency is available (§56301).
- 5.4. The proposed entity shall be able to generate sufficient revenue to provide the requested service (§56668, §56001).
- 5.5. The petitioner will provide and the Commission shall consider a cost versus benefits study showing the fiscal and levels of service gains and/or losses resulting from the formation (§56001). The project will not be approved if the costs are demonstrated to outweigh the benefits.
- 5.6. The proposal for the formation of a special district shall describe the relationship of the newly formed district to existing agencies (§56001). The proposed formation shall not undermine the logical expansion of adjacent or other governmental agencies or districts (§56301).
- 5.7. If LAFCo determines that a formation will necessitate adoption of any new regulations or the amendment or repeal of any regulations adopted by the county, LAFCo may condition approval of the application upon the adoption, amendment or repeal of the regulations and shall initiate and conduct proceedings to adopt such conditions.
- 5.8. LAFCo shall process formations consistent with statutory provisions in various principal acts.
- 5.9. LAFCo shall encourage voter-registration as the basis for representation in a new district when possible.

### **Procedures:**

- 5.10. In addition to the petition or resolution initiating the formation and all other information required in Section 2.0, an application for formation shall include:
  - The statutory section under which the formation would occur;

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- The functions and services proposed to be provided by the district and powers that shall remain latent;
  - An operating budget for the proposed district including revenue and expenditure estimates during the three years following formation; and
  - A discussion of alternative district boundaries and the rationale for alternative boundaries.
- 5.11. If the formation is approved, the Commission shall determine the final boundaries, set the base property tax (§56810) and appropriations limit (§56811, §57120) for the proposed district, and any terms and conditions of approval (§56125). If the Commission wholly disapproves a proposal, no new proposal involving the same or substantially the same territory shall be initiated for one year after the date of the Commission's resolution, unless this provision is waived by the Commission (§56884).
- 5.12. The CKH Act permits the conducting authority to take one of the following three actions:
- Order the formation without an election, if the formation is part of a reorganization or consolidation where two or more districts are proceeding under the adoption of substantially similar initiating resolutions (§56853, §56854, §57081);
  - Order the formation subject to confirmation at an election (§56854); or
  - Terminate the formation proceedings if protests are filed by (§57077, §57078):
    - a. In the case of uninhabited territory, land owners owning 50% or more of the assessed value of the land within the territory.
    - b. In the case of inhabited territory, 50% or more of the registered voters within the territory.
    - c. In the case of land owner-voter districts, 50% or more of the voting power of the voters entitled to vote as a result of owning land within the proposed district.
- 5.13. If an election is held and a majority of the votes is cast for formation of the district, the conducting authority shall pass a resolution confirming the order of formation. The election may also decide the membership of the district's governing body, and any other issues provided for in the principal act under which formation is occurring (§57139).

### 6. District Latent Powers

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LAFCo has the authority to adopt, amend or repeal regulations affecting the functions and services of special districts. LAFCo must conduct service reviews, which evaluate issues related to exercised and latent powers (§56430). Latent powers are those permitted under a principal act but not exercised as of July 1, 1994 when Alameda LAFCo added special district representation to the Commission. If a special district desires to activate latent powers, or increase the area of service for an active power, the district must seek approval from LAFCo (§56824.10, §56824.14).

### **Policies:**

- 6.1. LAFCo shall require existing districts with SOIs to file written statements with the commission specifying the functions or classes of service provided by those districts (§56425, §56430).
- 6.2. LAFCo shall establish the nature, location, and extent of any functions or classes of service provided by existing districts as part of SOI update and service review processes (§56425, §56430). LAFCo may classify service types, where appropriate.
- 6.3. No new or different function or class of service shall be provided by any existing district, except upon approval by the commission (§56824.10, §56824.14).

### **Procedures**

- 6.4. Repeals of a district's range of powers may be initiated by resolution of the special district or by LAFCo (§56821). Proposals for the exercise of new or different functions or classes of service must be initiated by the special district.
- 6.5. Applications for amendments to powers must include a service plan that contains information required in Part III, Section 2.0 including estimated costs, identification of existing providers and alternatives (§56824.10).
- 6.6. Amendments to a district's range of powers shall be considered at a noticed LAFCo public hearing. Final decisions may be rendered at the hearing. No subsequent actions, proceedings or elections are required.

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### 7. District Consolidation

Consolidation is the uniting of two or more districts into a single new successor district.

#### **Policies:**

- 7.1. LAFCo shall conduct a special study or service review prior to initiation of a district consolidation (§56378, §56430, §56837, §56853).
- 7.2. LAFCo should initiate consolidations when the conclusions or determinations of special studies or service reviews indicate that consolidation would result in improved service provision at the same or lower cost.
- 7.3. Prior to initiating a consolidation, LAFCo will notice potential affected agencies and conduct a meeting to identify issues, gather information and collaborate on the terms and conditions. A meeting with the general public may also be conducted.
- 7.4. Effects of district consolidations on successor cities or districts, as codified in §§57500-57502, shall be considered during deliberations on the proposal.
- 7.5. LAFCo shall consider a proposed consolidation at a noticed public hearing.
- 7.6. LAFCo shall approve, or conditionally approve, a consolidation initiated by substantially similar resolutions of agencies proposed to be consolidated. If the consolidation is approved, the Commission may adopt terms and conditions for approval.
- 7.7. LAFCo will not make material changes to terms and conditions contained in such resolutions without providing a 30-day notice to applicants or add or delete districts without the written consent of the applicant local agencies (§56853).
- 7.8. The successor agency shall bear all election costs unless an alternate agreement is reached between the proponents and LAFCo or the election fails (§57150).

#### **Procedures:**

- 7.9. Proceedings for consolidation of special districts shall be initiated by petition, by resolution of the governing body of an affected local agency or by LAFCo (§56375(a)).
- 7.10. Petitions for consolidation shall be signed as follows:
  - For registered-voter districts, by not less than 5% of the registered voters within each of the districts; or

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- For land owner-voter districts, by land owner-voters within each of the districts and who also own not less than 5% of the assessed value of land within each of the districts (§56865).
- 7.11. The Executive Officer shall order the consolidation without election if the consolidation has been initiated by majority resolutions of the affected districts unless a petition is submitted signed by 25% or more of the landowners owning 25% or more of the assessed value of the territory, or voters requesting an election (§56853, §57081).
- 7.12. Elections shall be conducted consistent with the principal act of the successor district (§57139).
- 7.13. Proceedings must be terminated if a majority protest exists, or if a majority of favorable votes were not cast in each district proposed to be consolidated (§57078, §57177.5).
- 7.14. Consideration and disclosure of the effects of consolidations on successor cities or districts, including disposition of assets, shall be an integral part of the consolidation review process (§56668, §§57500-57502).

### 8. District Dissolution

Dissolution means the dissolution, disincorporation, extinguishment, and termination of the existence of a district, and the cessation of all its corporate powers, except as LAFCo may otherwise provide pursuant to Section 56886 or for the purpose of winding up district affairs (§56035).

#### **Policies:**

- 8.1. LAFCo should initiate dissolutions whenever the determinations or recommendations of a service review (§56430) or special study indicate that dissolution is needed in the short term, or there is substantial public support and a request for the proposal.
- 8.2. LAFCo will assume processing costs of LAFCo initiated dissolutions, and condition approvals to require that the remaining assets of a dissolved district will be used to repay LAFCo's costs.
- 8.3. Assets of the dissolved district shall be used to fund election costs, unless an alternate agreement is reached between LAFCo and organization or reorganization proponents or the county, or the election fails (§57150).

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8.4. Consideration and disclosure of the effects of dissolutions, including disposition of assets, shall be an integral part of the dissolution review process (§56668, §§57450-57463).

### Procedures:

8.5. Proceedings for dissolution of a district may be initiated either by petition, resolution of the governing body of an affected agency or LAFCo (§56375(a)).

8.6. Petitions for dissolution shall be signed by (§56870, §56871):

#### For resident voter districts:

- Not less than 10% of registered voters within the district; or
- Not less than 10% of landowners within the district who also own not less than 10% of the assessed value of land within the district.

#### For land owner-voter districts:

- Not less than 10% of landowner-voters within the district who also own not less than 10% of the assessed value of land within the district.
- 8.7. A petition for dissolution of a district for "non-use of corporate powers" requires signatures of three or more registered voters within the district for a registered-voter district, or three or more land owners within a land owner district, provided that one or more of the following conditions have existed or now exists:
- During the three year period preceding the date of the first signature on the petition there has not been a duly selected and acting quorum of the board of directors of the district; the board of directors has not furnished or provided services or facilities of substantial benefits to residents, landowners, or property within the district; and the board of directors has not levied or fixed and collected any taxes, assessments, service to residents, landowners, or property within the district (§56871).
  - During the one-year period preceding the date of the first signature upon the petition, a quorum of the duly selected and acting board of directors has not met for the purpose of transacting business.
  - Upon the date of the first signature upon the petition, the district had no assets, other than money in the form of cash, investments, or deposits.

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8.8. The Executive Officer will determine the value of written protests filed and not withdrawn, and take one of the following actions:

- Order the dissolution without election (except for the dissolution of health care/hospital districts which require an election) if protests are insufficient and the Commission made any of the following findings (§57102, §57103):
  - That corporate powers have not been used, as specified in §56871, and that there is a reasonable probability that those powers will not be used in the future;
  - That the district is a registered-voter district and is uninhabited;
  - That the board of directors of the district has, by unanimous resolution, consented to the dissolution; or
  - That the Commission has authorized, pursuant to §56854, the dissolution of the district without election.
- Terminate proceedings if a majority protest exists (§57078).
- Forward the dissolution for confirmation by the voters if 25% of the registered voters, landowners or landowner-voters owning more land worth more than 25% of total assessed value protest unless initiated pursuant to §56375 (§57114).

### 9. District Mergers and Establishment of Subsidiary Districts

A merger is the extinguishment, termination and cessation of the existence of a district of limited powers by the merger of such a district with a city as a result of proceedings initiated pursuant to the following procedures (§56056). A subsidiary district is a district of limited powers in which the city council of a city shall be designated as, and empowered to act as, ex officio board of directors of such district (§56078).

For a merger, the territory of a district must be included entirely within the boundaries of a city (§57104). For the establishment of a subsidiary district, the entire territory of a district must be included within the boundaries of a city; or a portion or portions of the territory of such district must be included within the boundaries of a city and such portion or portions must represent 70% or more of the area of land within such district and contain 70% or more of the number of registered voters who reside within the district (§57105). A merger of a subsidiary district, with the city that already governs it, is not subject to Revenue and Taxation Code §§99 and 99.01.

#### **Policies:**

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- 9.1. Any proposal for a merger will also consider the alternative proposal of establishment of a subsidiary district and any proposal for establishment of a subsidiary district will also consider the alternative proposal for a merger (§56118). The exception is the case of mergers of existing subsidiary districts.
- 9.2. Consideration and disclosure of the effects of mergers and establishment of subsidiary districts, including disposition of assets, shall be an integral part of the review process (§56668, §§57525 - 57535).

### **Procedures:**

- 9.3. A merger or subsidiary district proposal may be initiated by petition or resolution as follows (§56654, §56866):
  - Petition for a merger of a registered-voter district of limited powers, which overlaps a city, or for the establishment of such district as a subsidiary district of such city must be signed by 5% of the registered voters of the district; or 5% of the registered voters residing within the territory of the city outside the boundaries of said district.
  - Petition for a merger of a land owner-voter district of limited powers, which overlaps a city, or for the establishment of such district as a subsidiary district of such city must be signed by 5% of the number of land owner-voters who own not less than 5% of the assessed value of land within such district; or 5% of the registered voters residing within the territory of such city outside the boundaries of the district.
- 9.4. Within 10 days after receiving a proposal to form a subsidiary district, the Executive Officer shall notify by certified mail the district or districts, which are the subject of the proposal. Within 35 days after receiving the notice from the Executive Officer, the board of directors of the subject district or districts may adopt a resolution consenting to the subsidiary district proposal, with or without requesting additional terms and conditions; or adopt a resolution of intention to file an alternative proposal to the subsidiary district proposal. Resolutions must be filed with the Executive Officer (§56861).
- 9.5. If a district files a resolution of intent to file an alternative proposal, the Executive Officer shall take no further action on the original proposal for 70 days. During this period the district shall prepare and submit a completed application for the alternative proposal. A district, which has filed a resolution of intention but has not filed a completed application within the prescribed time, shall be deemed to have consented to the original subsidiary district proposal (§56862).
- 9.6. After receiving an alternative proposal, the Executive Officer shall analyze and report on the original and alternative proposal concurrently and schedule the proposals for a simultaneous public hearing (§56862).



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- 9.7. Within 35 days following conclusion of a hearing on an original and alternative proposal to form a subsidiary district, the Commission shall adopt its resolution of determination, disapproving both the original proposal and the alternative proposal, or approving one proposal and disapproving the other. (§56863).
- 9.8. For establishment of a subsidiary district, a noticed protest hearing is required at least 90 days but no more than 135 days after required notice (§57002, §57025).
- 9.9. Upon conclusion of the hearing, the Executive Officer shall take one of the following actions providing that boundaries have been determined and are included in any order (§57104, §57105, §57106, §57107):
- Order the merger, establishment of a subsidiary district, or both, subject to confirmation by the voters; or
  - Order the merger or establishment of a subsidiary district without an election, provided that both the city council and the district board of directors shall have filed with the Commission at the time of the hearing provided for in §57025 a resolution consenting to the merger or the establishment of the subsidiary district and insufficient requests for election have been received (§57107).
  - Forward the proposal to the affected city, and the affected city shall call, hold and conduct any election or elections upon such question or questions only within the district ordered to be merged with or established as a subsidiary district; or within said district and within the territory of said city outside the boundaries of said district. If the proposal is part of an Incorporation, the proposal is forwarded to the principal county and the county shall call, order and conduct the election. (§57108, §57118)
- 9.10. The election shall be held only within the district if prior to the adoption of a resolution ordering merger or establishment of a subsidiary district a petition is filed and approved which (§57108, §57113, §57114):
- In the case of a registered-voter district, is signed by not less than 10% of the registered voters of the district; or
  - In the case of a land owner-voter district, is signed by not less than 10% of the number of landowner-voters within the district who also own not less than 10% of the assessed value of land within the district.
- 9.11. A ballot for merger and establishment of a subsidiary district must permit voters to approve or disapprove both proposals (§57110, §57138).

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9.12. After canvassing returns pursuant to §57143, the Executive Officer shall execute a Certificate of Termination of Proceedings (§57179) or execute a Certificate of Completion confirming either the order of a merger or the order for the establishment of a subsidiary district in the following manner (§57177):

- Where the question submitted to the voters was only upon merger or only upon establishment of a subsidiary district, confirming the order if a majority of the votes cast on the question favored the order either at an election called only within the district; or at each election, where one election was called within the district and another election was called within the territory of the city outside the boundaries of the district.
- Where both the question of merger and the question of establishment of a subsidiary district were submitted to the voters within the district only, and both questions were favored by a majority of the voters, ordering that change of organization favored by the greater number of voters. Where the number of votes was the same on both questions, the merger shall be ordered.
- Where both the question of merger and the question of establishment of a subsidiary district were submitted at an election called both within the district and at an election within the territory of the city outside the district boundaries, and both questions were favored by a majority of the voters in both areas, that change of organization receiving the greater number of votes in both elections shall be completed. Where the number of votes was the same, or where the question of merger received the greater number of votes in one of the elections, a merger shall be completed.

9.13. If an election fails, LAFCo shall not consider any similar proposal for the new district until two years has passed (§57112).

### 10. City Incorporations

Incorporation is the process that shifts local government responsibility for an unincorporated area from a county's jurisdiction to a new city with corporate powers (§56043). The reasons for incorporation efforts vary. The most common are to improve local public services, capture increased revenues to support local services, give a community local control over land use planning, create an accountable local governing body, and pursue local policy goals.

The CKH Act has enabled the creation of new cities since its inception. However, until the early nineties, there was no mechanism that ensured that incorporation processes did not provide higher levels of service to residents of a new city by reducing the level or quality of service for residents of unincorporated areas. The CKH Act now requires that incorporations result in a substantially similar transfer of services and responsibilities.

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Alameda LAFCo's incorporation process is designed to ensure that the incorporation process produces a cityhood proposal that is financially feasible, fiscally prudent, environmentally sound and responsive to local and regional needs and perspectives. At the same time, incorporation proposals must ensure that service levels and quality are maintained for County residents, and social and environmental conditions in unincorporated areas are not degraded by associated revenue losses. If incorporation proposals cannot meet these tests, LAFCo will not view them favorably.

### **Policies and Standards**

- 10.1. Incorporation procedures are designed to avoid unnecessary delays and facilitate application processing.
- 10.2. LAFCo shall request that the County and each affected district provide a single point of contact for day-to-day contacts, proposal notifications, inquiries and mailings. Each entity may provide multiple contacts to receive notices. However, the assigned point of contact will be responsible for disseminating information.
- 10.3. The proposed city shall be entirely within Alameda County, all parcels must be contiguous, without exclusions (islands) and possess a community identity (§56741, §56742).
- 10.4. New cities should assume jurisdiction over as many services as feasible. To that end, LAFCo shall consider modifying incorporation proposals and boundaries, where appropriate, to include changes of organizations that transfer services from special districts to the city. An SOI shall be determined for the new city.
- 10.5. In addition to LAFCo's general proposal policies, LAFCo will consider the following when determining final incorporation boundaries, alternatives and SOI lines:
  - The need to include a variety of land uses within the proposed city to ensure a balanced and viable economic base for the new city.
  - Existing topographical, geographical and historic characteristics.
  - Positive or negative effects on existing communities within, adjacent to or in the project vicinity.
  - The need to maintain the cohesive identity of unincorporated communities, when appropriate, including appropriate exclusions of territory from a proposed city.
  - The need to ensure that a proposal is integrated with existing service providers to ensure ease and economy of service delivery, and avoid service disruptions.

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- 10.6. LAFCo shall deny an incorporation proposal if (1) there is no demonstrated need for municipal services and controls; and (2) the required cost versus benefits analysis indicates that costs outweigh benefits (§56886.5).
- 10.7. Revenue Neutrality. LAFCo shall evaluate a proposal's fiscal impacts and enable the development and adoption of revenue neutrality mitigation terms and conditions based on the following policies, criteria and standards:
- The structure of fiscal and service exchanges shall provide for county financial stability, and maintenance of existing service levels for residents of the unincorporated area, while permitting the incorporation of financially stable communities that desire self-governance.
  - LAFCo will work cooperatively with the county and incorporation applicants to develop mitigation measures that address potential county fiscal damages without making incorporations infeasible for local communities, or precluding an adequate fiscal base for new cities.
  - LAFCo shall ensure that no public agency is forced to lower service levels for residents in the unincorporated area of a county or remainders of a special district's service area as a result of incorporation. To that end, all agencies whose service responsibility or territory would be changed as a result of the incorporation proposal shall participate in revenue neutrality negotiations to develop mitigation for potential negative fiscal impacts.
  - Separate revenue neutrality determinations will be made between the proposed city and the county and between the proposed city and any affected special district(s).
  - Revenue neutrality agreements must ensure that service quality is maintained for unincorporated area residents, and social and environmental conditions in unincorporated areas are not degraded because of the proposal.
  - Financial feasibility studies need to state a projection of costs associated with the provision of a revenue neutral change of government as cityhood costs. Such costs should be termed "maintenance of existing service levels in unincorporated areas." The intent is to avoid the perception that the need to protect unincorporated area residents is making the proposal infeasible as opposed to being part of the city's expected financial responsibility.
  - A preliminary feasibility analysis is an application requirement and is a prerequisite for formal initiation of revenue neutrality agreements. The intent is to avoid unnecessary costs derived from the use of incorrect data, faulty data assumptions or an incorrect project description.

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- Revenue neutrality discussions should include an assessment of the impacts and mitigations for potential project alternatives.
- Expenditure and revenue data will be taken from the most recent prior fiscal year preceding incorporation for which data are available.
- Fiscal impacts related to restricted or general fund revenues will be evaluated separately. Surplus or deficit in one revenue fund will not be used to offset a surplus or deficit in the other.
- Functions that are self-supporting, such as application processing and building inspections, should be identified for planning purposes, but need not be considered in the revenue neutrality agreement.
- All identifiable service related expenditures being transferred to the proposed city, such as costs for jail bookings and general government services, will be considered in determining revenue neutrality. Losses derived from underutilized infrastructure or loss of economies of scale should be quantified as feasible.
- Mitigation conditions may range from one-time payments to ongoing annual transfers of revenues or taxes. The mitigation time period proposed in the feasibility study will evaluate any unique circumstances associated with the incorporation. Based on that evaluation, the feasibility study should propose whether mitigation should be based on tax sharing agreements, lump sum payment or payments over a fixed period of time.
- Revenue neutrality payments should not be extended for more than ten years unless a longer period is clearly justified in the feasibility analysis and revenue neutrality agreement.
- A revenue neutrality agreement shall describe methodologies and assumptions leading up to recommended terms and conditions and include criteria and a process for modification of the agreement after incorporation.
- Only identifiable and recurring revenues and expenditures should be evaluated for purposes of determining revenue neutrality. Anticipated or projected revenue growth should not be included.
- Expenditures for services transferred to a new city should be evaluated on a “net cost” basis.
- Costs of capital improvements are not recurring costs and should not be included.
- Countywide costs of general government, including the Clerk of the Board, Auditor-Controller, and other administrative government functions which are

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required to support county governance of both incorporated and unincorporated areas should not be included in defining services or revenues to be transferred to the new city.

- County losses during the transitional period following the effective date of incorporation should be calculated and mitigated.
  - 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.
  - County fees charged for services to other jurisdictions (such as property tax administration fees) should be considered as off-setting county revenue losses in the calculation of fiscal effects on the county.
- 10.8. LAFCo shall consider proposal effects on special districts. LAFCo may refer the incorporation to a reorganization committee if the proposal includes, or may be modified to include, the consolidation, dissolution, formation, or merger of a special district or establishment of a subsidiary district, and fiscal, boundary or service quality issues cannot be resolved through negotiations among service providers.
- 10.9. The Alameda LAFCo may only approve a proposal that includes incorporation if it finds that Alameda County and all of the subject agencies agree to the proposed transfer, or 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 (§56815, §56886, §§57300 et sequitur).
- 10.10. LAFCo shall contract directly with, and supervise the work of, the consultant that prepares the preliminary feasibility analysis and the Comprehensive Fiscal Analysis. The project applicants are responsible for actual LAFCo and consultant costs.

### **Application Requirements.**

Incorporation proposals are subject to a complex series of statutory requirements designed to ensure that the new city is financially stable and self-sufficient and that the reallocation of local revenues to the new city is equitable and not harmful to unincorporated communities. The incorporation applicants will need to designate in writing the person who will serve as principal contact and the person who is responsible for paying fees. The contact needs to be able to attend pre-submittal and progress meetings. The applicants may change the designated person/s at any time by notifying LAFCo in writing.

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The incorporation applicants need to provide the following items when submitting an application. The Executive Officer may require additional information as needed to process the incorporation proposal (§56652 (d)(e)).

- 10.11. Project Description. The applicants need to prepare a detailed project description. The project description must clearly indicate project boundaries; list every LAFCo change of organization that is required; list all existing and proposed service providers, and contain other information needed to process the application. The project description will be the base for financial and environmental evaluations.
- 10.12. Feasibility Study: A preliminary feasibility study is required before revenue neutrality negotiations are formally initiated. Five (5) copies of a draft feasibility study are required as part of the application package. The feasibility study package must include the following information:
  - a. A completed standard LAFCo application form (See Appendix).
  - b. A brief discussion of the relevant history and characteristics of the proposed incorporation area.
  - c. A description of the local agencies which presently serve the community, the range and level of services currently provided, improvements, upgrades or other conditions the local agency would impose or require, information about methods for financing services, and the increased range and improved level of services potentially available in the community if incorporated (§56653).
  - d. A rationale for the proposed city boundaries, and a description of possible boundary alternatives, including a discussion of the effects of incorporation upon adjacent communities, special districts and the county. While a description of possible boundary options is not mandatory, LAFCo staff will analyze possible boundary alternatives. Most incorporation applicants include possible boundary alternatives to ensure to the extent possible that alternatives consistent with incorporation goals are considered.
  - e. A Proposed SOI (optional). As with alternate incorporation boundaries, most applicants include a proposed SOI in the incorporation package to ensure that areas, expected to annex in the future, are compatible with their vision of the new city. A proposed SOI may be coterminous with proposed city boundaries. LAFCo staff will independently recommend an SOI. The CKH Act requires that an SOI be adopted within one year of the effective date of incorporation.
  - f. A Service Review (optional). An SOI cannot be created without a review of all services (1) provided in the incorporation area and (2) proposed or required to be provided by the new city (§56430). If the applicants do not

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provide a service review, LAFCo will cause one to be prepared prior to deeming the project filed. See Part III, Section 18.0 for service review policies, standards and procedures.

- g. Map and Legal Description of Incorporation and SOI boundaries. It is recommended that the incorporation map & legal description include alternative boundaries and a proposed SOI. Final maps and legal descriptions are developed following LAFCo approval. Incorporation applicants are responsible for the cost of preparing final maps and legal descriptions. (See Appendix C for map and legal description preparation requirements.)
- h. Fees. During the presubmittal meeting, LAFCo staff will work with applicants to develop a preliminary timeline and cost estimate. LAFCo is permitted to recover all reasonable application processing costs. Incorporation applicants are required to submit a deposit when the application is submitted. The actual costs for processing the application may be higher than the initial deposit. Because the actual costs accrue incrementally, a proposed payment schedule will be developed for each incorporation application linking fee payment to the application processing timeline.
- i. Comprehensive Fiscal Analysis (CFA). The Executive Officer will prepare, or cause to be prepared by contract, a comprehensive fiscal analysis. Data used in the CFA shall be from the most recent fiscal year preceding the issuance of the certificate of filing for which data is available. When requested data are unavailable, the analysis shall document the source and methodology of the data used. (§56800, §56665). To be accurate and usable, the CFA must be based on the same project description as the preliminary feasibility analysis, the CEQA document and ultimately the ballot measure. The CFA should evaluate reasonable project alternatives provided by the Executive Officer and project applicant. The CFA shall document the source and methodology used and must include:
  - §56800 requires a forecast of the new city's revenues and expenditures during the first three full fiscal years following incorporation. However, during the first seven (7) years a new city receives some state subventions based on a formula of three times the number of registered voters. After the seventh year, the distribution of those state subventions changes to a formula based on the actual population of a city. In order to accurately estimate a new city's long-term financial feasibility, LAFCo requires budget projections for the first full eight (8) years. All expected general fund, gas tax, real estate tax, transient occupancy tax, franchise fees, fees and other revenue, and direct and indirect costs need to be quantified including overhead, one-time costs, deferred maintenance and existing infrastructure needs, general government costs and costs of regional services.



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- County and other affected agency costs including (1) all actual or estimated direct and indirect costs from services associated with current provision of services including those currently provided by local agencies and proposed to be assumed by the new city, the contracting cost of the same service level if applicable, and any administrative savings accruing to current service provider as a result of service transfer; (2) all general fund costs used to support a fee-supported service where costs are not fully recovered through fees, and (3) transfer of services costs that result in an administrative cost reduction to the agency. The direct and indirect costs of state agency services to be assumed by the new city shall also be included. A comparison of service costs to similar cities providing a similar level and range of services shall be made and The Executive Officer shall consider this data when determining reasonable costs to be assumed by the proposed city (§56800).
- City costs shall include a minimum of a 5% reserve or contingency fund.
- Incorporations should not occur primarily for financial reasons and should result in a similar exchange of both revenue and responsibility for service delivery among affected agencies (§56815). An analysis of potential adverse fiscal impacts upon the county and other agencies and a discussion of revenue neutrality issues and strategies are required. Mitigation measures must be recommended which are expected to neutralize fiscal consequences. Analysis and mitigations shall be consistent with revenue neutrality policies;
- Property tax distribution (§56810 and §56815); and
- Any other information required to make findings pursuant to §56720.

### **Procedures**

The State OPR has issued draft guidelines for incorporation proceedings.<sup>1</sup> LAFCo will use formulae provide in that document as a base for property tax and appropriation limit calculations. Some modifications to certain variables such as net county cost may be necessary based on the specific proposal and county characteristics.

10.13. At least 500 registered voters must reside in an area proposed for incorporation (§56043). Incorporations can be initiated with a petition signed by not less than 25% of the total number of registered voters residing in the area to be incorporated (§56764(a)) or by not less than 25% of the total number of land owners owning property valued at a minimum of 25% of the total assessed value of land in the incorporating area (§56764(b)). Incorporations can also be initiated

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<sup>1</sup> A copy of the guidelines may be obtained from the OPR web site at [www.opr.ca.gov](http://www.opr.ca.gov).

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with a resolution of application of the legislative body of any city, district or county that contains territory within the proposed incorporation boundaries (§56650).

10.14. Application by Resolution. Any affected agency in the area proposed for incorporation may become the applicant by adopting a resolution of application (§56654). In this case, the agency board assumes the leadership role in the complex incorporation process and is responsible for completion of all application requirements including the payment of fees. At least twenty days (20) prior to adoption of the resolution, the agency may give mailed notice to LAFCo and other agencies. The contents of the resolution must include all of the same components as an application petition except for the signature requirements and shall be submitted with a plan for services (§56653). All of the following procedures except those pertaining to signatures apply.

10.15. Initiation by Petition of Registered Voters. Incorporation applicants desiring to initiate action by petition must comply with the following form and process. In addition, a successful petition drive usually requires that applicants: (a) collect at least 10% to 15% more signatures than required in order to compensate for invalid signatures; (b) have each circulator review the proposed incorporation boundary map with each petition signer to confirm residence within the area to reduce the number of invalid signatures; and (c) set a deadline for collection of all petitions to ensure task completion within mandatory legal time limits. The following requirements apply:

- Before circulating a petition, applicants shall file with the LAFCo Executive Officer a “Notice of Intention to Circulate a Petition” (See Exhibit A) that shall include the name, mailing address and signature of a representative of the applicant and a written statement, not to exceed 500 words, setting forth reasons for the proposal (§56700.4(a)). Upon receipt, the Executive Officer will notify affected agencies.
- The text of a petition for city incorporation must include (§56700 et sequitur):
  - A statement that the proposal is made pursuant to the CKH Act.
  - A brief statement of the nature of the proposal and a listing of other concurrent changes of organization.
  - A map and description of the incorporation boundaries.
  - Proposed terms and conditions.
  - A statement of the reason(s) for the proposed incorporation.
  - A statement as to whether the petition is signed by registered voters or landowners.
  - The names of the chief petitioners (not to exceed three).
  - A request that further proceedings be taken by LAFCo pursuant to the provisions cited.

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- A statement of whether the proposed incorporation is consistent with the SOIs of any affected city or district.
  - The proposed name of the new city (optional).
  - Any provisions for appointment of a city manager and appointment of elected officials except for city councils members (optional).
  - A location for each signer's printed name, street address (post office boxes are not sufficient), signature and the date of signature (§56704). A sample petition is provided as Exhibit D.
- 10.16. The LAFCo Executive Officer must be notified of the date of the first petition signature in order to establish the total number of registered voters in the proposal area and to establish a numerical signature requirement.
- 10.17. All signatures must be gathered within a six-month period from the date of the first signature. Incorporation petitions must be submitted to LAFCo for filing within 60 days of the date of the last signature on the petition (§56705).
- 10.18. Within 30 days after the date the petition is filed with LAFCo, the Executive Officer shall cause the petition to be examined by the county elections official, in accordance with §§9113-9115 of the Elections Code, or county assessor for landowner petitions and shall issue a "Certificate of Sufficiency" or "Notice of Insufficiency" (§56706(a)).
- 10.19. The County Registrar of Voters examines registered voter petitions to determine the number of required signatures and the number of valid signatures (§56707). The total number of valid signatures necessary to meet the 25% requirement for a petition of registered voters will be established by the registrar of voters as of the date of the last voter registration report prior to the date the first signature on the petition. Landowner petitions are examined by the County Assessor's Office to determine their validity based on the most recent equalized assessment roll being prepared by the county at the time the proponent adopts a resolution of application or files a notice of intention to circulate a petition pursuant to §56700.4 (§56708).
- 10.20. The Registrar of Voters or County Assessor may charge a fee for signature verification. Verification costs are charged in the same manner and to the same agencies that bear costs for verifying initiative petition signatures (§56383(e)).
- 10.21. If the petition is determined to be insufficient based upon the number of signers, the LAFCo Executive Officer will notify the chief petitioners by certified mail. The applicants have 15 days after the date of this notice to submit a supplemental petition to the LAFCo Executive Officer (§56706(b)(1)). This is the only opportunity to collect additional signatures.

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- 10.22. Within 10 days of the date the supplemental petition is filed, the LAFCo Executive Officer will have the petition examined and certify in writing the result of his/her examination. If the petition is found to be insufficient, it will be filed as a public record “without prejudice” to any future filing (§56709). If sufficient, a Certificate of Sufficiency will be prepared and mailed to the applicant.
- 10.23. A completed LAFCo application for incorporation must be submitted with the petition or resolution initiating the incorporation proposal. LAFCo staff reviews submitted application materials, conducts its own analyses including the CFA, performs the environmental review, determines the property tax transfer and revenue neutrality amounts, solicits comments and produces a final report with required recommendations. During this process, the submittal of additional information or studies, preparation of a new CFA or CFA revisions may be required. This process can take a year or more especially if procedures are not followed exactly.
- 10.24. Immediately after receiving an application, the Executive Officer shall send notice pursuant to policy 2.33. The notice shall additionally advise affected agencies that they must acknowledge receipt of LAFCo’s request within fifteen (15) days. The Executive Officer must also develop a timeline for data submittal from local and state agencies pursuant to §56658 (b)(2).
- 10.25. As soon as adequate financial information is available, the Executive Officer will convene a revenue neutrality negotiating committee composed of representatives of the county, other affected agencies, and representatives of the applicants of incorporation. LAFCo staff, and the CFA preparer if different, will attend meetings of this committee in order to facilitate discussions and compliance with this policy.
- 10.26. The revenue neutrality committee will have up to 90 days to negotiate and propose terms and conditions to meet the requirements of §56845. The effective date of incorporation should be negotiated. The effective date needs to be set to ensure that the new city possesses adequate account balances to fulfill its service responsibilities without exacerbating county financial losses. Any proposals for the terms and conditions of revenue neutrality should adhere to the standards for content described in this policy.
- 10.27. After the revenue neutrality committee has completed its work, or the end of the 90 day negotiating period, the Board of Supervisors, and any other participating Boards, will adopt a Resolution of Agreement, and the applicants will provide a letter of agreement to the proposed terms and conditions. The Executive Officer will certify that agreement about the revenue neutrality terms and conditions has been reached or has not been reached.
- 10.28. If agreement to proposed terms and conditions for revenue neutrality does not occur within the 90-day negotiating period, LAFCo staff will draft proposed terms

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and conditions for use in the CFA and for recommendation to the Commission at its public hearing

- 10.29. When the CFA is completed, the Executive Officer will notify all interested parties that it is available for public review by publishing notice in a newspaper of general circulation serving the proposed incorporation area and by mailing notice to all affected agencies, the chief proponents and all persons who have filed a written request for notification. The notice shall specify the locations where the fiscal analysis can be reviewed and the time period in which the Controller's review can be requested.
- 10.30. Not less than 30 days following notice that the CFA is available, any interested party may request that the State Controller's Office review it (§56801). A request for a Controller's review shall specify, in writing, the elements of the fiscal analysis, which the Controller is requested to review and the reasons for requesting the review. The request must include the LAFCo processing fee plus a deposit of \$5,000, that will be credited toward the total costs of the Controller's review. The Executive Officer will contract with the Controller for review of the CFA. Prior to executing the contract, the party requesting the review will pay LAFCo for the remainder of the State Controller and LAFCo staff review costs. If the Controller notifies LAFCo that it expects to exceed the estimated cost, the party requesting the review will be required to pay the additional amount before the Controller proceeds with the related work.
- 10.31. Within 45 days of receiving the request, the Controller shall issue a report. Time limits imposed upon the LAFCo process shall be tolled while the Controller completes the report (§56801(c)).
- 10.32. When an application for incorporation is deemed complete, the LAFCo Executive Officer will issue a certificate of filing, specifying the date of the commencement of LAFCo hearings on the proposal. The public hearing must be set within 90 days of the issuance of the certificate of filing. Staff will also finalize analysis of the proposal.
- 10.33. The CFA must be completed and distributed not less than twenty-one prior to the public hearing. The report will be provided to the principal petitioners and/or officers designated in the application, each agency whose boundaries or SOI would be affected by the incorporation and all other parties filing written request for notice.
- 10.34. The Executive Officer shall prepare a report on the incorporation proposal and make the report available at least five days prior to hearing. The report shall, at a minimum, include and analyze the following items (§56665):

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- a. The Incorporation Boundaries (§56375). An analysis of proposed and alternative boundaries, and a recommended SOI or timetable for determining SOI.
  - b. A Plan for Services.
  - c. The Comprehensive Fiscal Analysis. This includes LAFCo and State Controller's analyses if any.
  - d. Recommended Terms and Conditions. LAFCO may either adopt conditions listed in §57835-57383 or §56886. Terms and conditions may include, but are not limited to, the following:
    - Continuation of services following incorporation.
    - Payments and taxes required by changes in service responsibilities or for revenue neutrality.
    - Disposition of money, property and rights of use, such as water or utility capacity rights.
    - Disposition of special district responsibilities, district governing boards and employees.
    - The effective date of incorporation.
    - Continuation of fees and charges, and prior conditions of approval for certain proposals.
    - Imposition of special and general taxes
  - e. Environmental Determination and Analysis.
  - f. Property Tax Distribution. The task of calculating the property tax transfer is generally performed as part of the CFA (§56810, §56815). The intent is for agencies to transfer revenues to the new city in proportion to the service responsibilities or expenditures required to provide those services.
  - g. Provisional Appropriations Limit Determinations. An interim appropriations limit or "spending ceiling" for the new city will be established as required by Article XIII B of the California Constitution. The initial appropriations limit is calculated in the manner described in §56812. Permanent appropriations limits are set at the first municipal election following the first full fiscal year of operation and shall not be considered a change in the appropriations limit.
- 10.35. LAFCo considers the staff report, and any written comments and testimony at the hearing. The Commission may continue the hearing (not more than 70 days) or close the public hearing and act on the proposal. Prior to a continuing a hearing, LAFCo shall allow the chief petitioners to describe any potential impacts or

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hardships that such continuance may cause and LAFCo shall consider those impacts prior to continuance. (§56666).

- 10.36. LAFCo may approve, deny, or modify and approve the incorporation proposal and may require terms and conditions. Terms may provide that changes to utility customer accounts be made within 90 days of the effective date of incorporation. LAFCo may determine final boundaries, establish governmental structure, determine base property tax and provisional appropriations limit, adopt mitigation measures, set an effective date for the incorporation, and adopt an SOI. LAFCo must adopt a resolution of determination within 35 days of the close of the hearing. If LAFCo denies the proposed incorporation, no similar application can be filed for at least one year unless LAFCo waives that prohibition. None of the terms and conditions shall modify water related requirements established by a court or ordered by the State Water Resources Control Board. (§56426.5, §56810, §56812, §56815, §56880, §56884, §56886, §57202).
- 10.37. A resolution of approval must include a findings and determinations addressing specified incorporation issues including (§56665, §56720, §56800).
- Consistency with the letter and intent of the CKH Act.
  - Consistency with the SOIs of all affected local agencies.
  - Conclusions and findings in the CFA and related Controller's report, if applicable. If the proposed incorporation is not revenue neutral, that affected agencies agree to the condition or adequate mitigation exists (§56815).
  - Acceptance or rejections of the Executive Officer's recommendations or conclusions, and consideration of testimony presented at the public hearing.
  - Expected revenues, and the ability to fund public services and maintain a reasonable reserve during the three fiscal years following incorporation.
- 10.38. Political expenditures in support or opposition of the proposal will be subject to the same disclosures as local initiatives to be presented to the electorate (§56700.1).
- 10.39. If the incorporation is approved, the Executive Officer, or Commission at its discretion, will administer conducting authority protest proceedings and hearings. Within 35 days of LAFCo's adoption of its resolution of approval, the Commission Clerk issues a "Notice of Hearing" scheduling the date for a protest hearing. The notice is published in a newspaper of general circulation in the incorporating area. The applicants (and others requesting notice) also receive the notice by mail. The purpose of the hearing is to collect and count written protests from registered voters residing within the incorporation area. The conducting authority hearing must be scheduled within 15 days of adopting determinations, and for the next regularly scheduled meeting for which proper notice can be given (§57002).

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- 10.40. Written protests submitted at the protest hearing will be verified by the County Registrar of Voters and tabulated. The conducting authority will, within 30 days of the hearing; (1) terminate the proceedings if more than 50% of the registered voters residing in the incorporation area submit written protest; or (2) order an election on the question of incorporation if written protest is submitted by less than 50% of registered voters residing in the incorporation area (§57077, §57078, §57116). If proceedings are terminated by majority protest or by the voters, no substantially similar proposal for the same territory may be filed within two years of the date of adoption of the resolution terminating proceedings (§57090).
- 10.41. The incorporation proposal is placed on the ballot for voter approval at the next available general election. If the incorporation is successful, the new city will be liable for payment of election costs. If voters reject the incorporation, the county absorbs the election costs (§57150(b)). If incorporation applicants request an earlier election than the next general election, they will be required to reimburse the County for the costs of the special election.
- 10.42. The LAFCo Executive Officer must draft an impartial analysis of the incorporation issue for inclusion in the incorporation ballot. The Commission may review the text of the impartial analysis and approve or modify it. The analysis must be submitted to the officials conducting the election not later than the last day for submitting rebuttal arguments (§56898).
- 10.43. The ballot will include approval or disapproval of the proposed city and an appropriations limit. The ballot may also include selection of the city's name and city council members, whether the number of city councils members shall be five or seven and whether subsequent city council elections shall be by district or at-large. A simple majority vote is required to approve the incorporation. If approved by voters, the incorporation becomes effective on the date determined by LAFCo (§56723, §56724).
- 10.44. Following the vote, the County Board of Supervisors will certify the election results by adoption of a resolution and forward a copy to LAFCo. The Executive Officer will then prepare a Certificate of Completion and Statement of Boundary Change that indicate the effective date or a Certificate of Termination of Proceedings (§57178, §57179).
- 10.45. The Executive Officer will arrange for recordation by the County Recorder. The Executive Officer will file incorporation completion documents with appropriate State agencies and affected county departments (§§57200-204).
- 10.46. On the effective date following approval by the voters, the five (5) people receiving the highest number of votes are sworn in as the new city council. The three (3) persons receiving the lowest number of votes serve until the next general election and the two (2) persons receiving the highest number of votes



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serve until the second general election. The new city council begins to organize the new city's administrative structure at their first meeting by adopting existing county ordinances. These ordinances remain in place for at least 120 days following incorporation or until the new city council adopts ordinances superseding the county ordinances, whichever occurs first. (§57375, §57376, §57377, §57378, §57379, §56727, §57380)

- 10.47. Generally a new city provides no direct services during the transition period between the effective date and July 1 of the first fiscal year following the effective date. The County continues to provide municipal services during the transition year to provide time for the new city to prepare for service responsibility before beginning of its first full fiscal year. A new city, at its own cost, may opt to assume responsibility for services at any time during the transition year. At the end of the transition year, the new city begins to provide the services that it is authorized to provide. At that time, the responsibility for service transfers from the County to the new city. (§57384, §57385)

### 11. City Consolidation and Disincorporation

A Consolidation is the unification of two or more cities in the same county into a single new successor city (§56030). A Disincorporation is the dissolution, extinguishment, and termination of a city, and the cessation of its corporate powers (§56034).

#### **Policies:**

- 11.1. LAFCo should consider and approve consolidations or disincorporations when the conclusions of special studies or service reviews indicate that reorganization would result in improved service provision at the same or lower cost.
- 11.2. The effects of city consolidations or disincorporations as codified in §§57400-57425, §§57475-57483) shall be considered during deliberations on the proposal.
- 11.3. LAFCo shall consider a proposed consolidation or disincorporation at a noticed public hearing.
- 11.4. If an election is ordered, the successor agency shall bear all election costs unless an alternate agreement is reached between the applicants and LAFCo or the election fails (§57150).
- 11.5. LAFCo shall approve, or conditionally approve, a consolidation initiated by substantially similar resolutions of agencies proposed to be consolidated. The Commission may adopt terms and conditions for approval. However, LAFCo will not make any material changes to terms and conditions contained in such resolutions without providing a 30-day notice to the applicants (§56853). In such cases, the consolidation shall be ordered without election.

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### **Procedures:**

- 11.6. Proceedings for consolidation or disincorporation can be initiated by petition, or by resolution of an affected local agency.
- 11.7. A petition for the disincorporation of a city shall be signed by not less than 25% of the registered voters residing in the city proposed to be disincorporated (§56765).
- 11.8. A petition for consolidation of two or more cities must be signed by not less than 5% of the registered voters in each city (§56766).
- 11.9. A resolution ordering a city consolidation subject to an election shall provide for the election of officers for the successor city, and state that the voters may express a name preference for the successor city (§57117).
- 11.10. Proceedings must be terminated if a majority protest exists (§57078), or if a majority of favorable votes were not cast in each city proposed to be consolidated (§57177.5).

### **12. Reorganization and Special Reorganization Procedures**

Reorganizations are change of government proposals, which combine two or more changes of organization in a single proposal (§56073). Special reorganizations are reorganizations that include the detachment of territory from a city or city and county and its incorporation (§56075.5).

- 12.1. Reorganizations may be initiated by petition, by resolution of the governing body of an affected local agency or by LAFCo (§56375).
- 12.2. Petitions for reorganization must comply with the applicable signature requirements for each of the various changes of organization proposed in the petition (§56864.1) except for incorporations and district formations. (See policies and procedures for specific and general proceedings for more detailed information.)
- 12.3. Special reorganization proceedings shall be conducted in accordance with the procedures otherwise prescribed for city incorporation proceedings including §56720, §56800, §56810, §56815, and §57119 except that elections:
  - May not be held less than 88 days following resolution of election (§57132.5);
  - Must be held in the territory ordered to be detached and the entire territory of the affected city (§57119); and
  - Succeed only if a majority in each area approves the proposal (§57176.1).

### **13. Spheres of Influence**

§56425 requires that LAFcos establish and maintain SOIs for local agencies under its jurisdiction. An SOI is defined by statute as a plan for the probable physical boundary and service area of a local government agency as determined by the commission (§56076). SOIs include policies that affect the pattern and timing of growth within the planning area.

The SOI does not necessarily indicate a precise time frame for expansion of a city or district. However, local conditions and circumstances that may affect future annexations are generally described and analyzed.

An SOI is important because it defines the primary area where urban development is encouraged. The California Attorney General opined that SOIs should "serve like general plans, (and) serve as an essential planning tool to combat urban sprawl and provide well planned efficient urban development patterns, giving appropriate consideration to preserving prime agricultural and other open-space lands" (60 Ops. Cal. Atty. Gen. 118 1977). The California Court of Appeals has previously held that SOIs must be adopted before an annexation to the affected city or district can be considered (Resources Defense Fund v. LAFCo (1983) 138 Cal.App.3d 987).

If adopted and amended consistent with the CKH Act, an SOI can be used to:

- Promote orderly urban development in areas adjacent to a city or district using local government and ABAG projections to ascertain the status and appropriate direction of orderly development;
- Promote cooperative planning efforts between cities, the county, and special districts through reconciliation of incompatible General and Master Service Plans, the transfer of implementation programs contained in respective plans, coordination of property development standards and timely urbanization with adequate provision of essential services;
- Serve as a master plan for the future organization of local government within a county by (1) providing long range guidelines for the efficient provision of services to the public, (2) shaping logical government units that provide services in the most economical manner and are able to finance the required services; and (3) avoiding unnecessary and expensive duplication of services or facilities;
- Provide property owners with an understanding of the ultimate use and development potential of their land;

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- Guide Commission consideration of individual proposals for changes of organization, and initiation of specific reorganization studies and related reorganization proposals.

### **Policies and Criteria.**

- 13.1. LAFCo shall create and update SOIs working in cooperation with affected agencies and communities.
- 13.2. Each adopted SOI will be reviewed, as necessary, but not less than every five years following determination or initial review of an original SOI (§56425). After initial review, the Executive Officer will recommend that LAFCo either: (1) proceed with an SOI update study or; (2) affirm the existing SOI.
- 13.3. A service review of all municipal services pertaining to the subject SOI will be prepared prior to, or in conjunction with, each SOI update (§56430) or substantial amendment unless the Commission determines that a prior service review is still adequate. (See service review policies and procedures, Part V, Section 14).
- 13.4. A substantial SOI amendment is an amendment that causes the SOI to be internally inconsistent, is inconsistent with provisions of the CKH Act, has the potential to cause significant adverse social, economic, environmental or other consequences, or has substantial adverse regional planning implications. Substantial SOI amendments shall not be processed until service reviews are completed (§56430) and the subject SOI is updated consistent with §56425.
- 13.5. A substantial SOI amendment may be processed concurrently with a service review and incorporated into an SOI update. However, LAFCos will make service review and SOI update determinations and enact SOI policies prior to considering a substantial SOI amendment.
- 13.6. If an SOI has been recently updated, SOI amendments should be discouraged unless an adverse public health or safety impact may be avoided or remediated, a consolidation is requested by two or more agencies, or the applicant demonstrates that substantial changes in conditions since the SOI was adopted justify an amendment.
- 13.7. Agencies will be notified of the pending review of their SOI and will be encouraged to participate actively in any restudy efforts deemed necessary by the Commission.
- 13.8. LAFCo will make every attempt to amicably resolve SOI issues and boundary disputes through dialogue with affected agencies and communities.
- 13.9. Inclusion within an agency's SOI does not assure annexation to that agency.

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13.10. LAFCo determinations shall be consistent with the SOIs of the local agencies affected by that determination (§56375.5).

13.11. Before making SOI determinations, the Commission will review and consider the following (§56425, § 56425.5) :

- The service capacity, levels and types of services currently provided by the agency and the areas where these services are provided, topographic factors, financial capabilities, costs of service, and social and economic interdependencies;
- Existing and planned land uses and land use policies including consistency with county and city general plans, regional and state plans and special district master service plans;
- Projected growth in the affected area, and potential effects on agricultural and open space lands;
- A description of the services that will be provided to any areas which may be added to the SOI and the timing and method for funding expansion of facilities or services;
- An analysis of the effects a proposed SOI may have on other agencies and their service capabilities including improved or diminished service levels, potential duplication of services and underutilization of public infrastructure due to ineffective planning;
- The opportunity for infill development of incorporated vacant lands located adjacent to or within already developed areas rather than SOI expansions; and
- The potential for political and functional consolidations or other reorganizations when boundaries divide communities.
- The location or use of sewerage facilities, either developed or planned, police and fire protection service, waste disposal, provision of water transmission mains, water supply either planned or developed, parks and recreation services, compatible street circulation, economic and social relationships, geographic or natural topographic features such as rivers, ridge lines, and ravines, and man-made barriers, such as freeways, major streets, and railroads.

13.12. When determining which local agency should provide services, considerable weight will be given to an agency's ability and willingness to provide services. When more than one agency can serve an area, LAFCo shall also consider the conclusions of service reviews, each agency's service capacity, financial capabilities and costs of service, social and economic interdependencies,

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topographic, historic and environmental factors, input from affected communities and agencies, and pertinent LAFCo policies.

13.13. SOIs for cities and districts shall be used to promote the long-term preservation and protection of the County's agricultural and open space resources. LAFCos shall not include territory in an SOI if:

- It is not included in the land use element of a General Plan;
- There is no compelling evidence that services will need to be provided within the next 10 to 15 years;
- There is insufficient information to enable the commission to make determinations required in §56425; or
- The territory is included in the SOI of another agency more capable of providing services.

13.14. The Commission defines SOI types as follows:

Sphere type	Definition
Growth sphere	Contains territory beyond the jurisdictional boundaries of the local agency and is an indication that the need for public services in the area has been established and the agency has the ability to effectively and efficiently extend the full spectrum of services provided by the agency.
Coterminous sphere	Coincides with the jurisdictional boundaries of the local agency and is an indication that the agency is landlocked, that there is no anticipated need for the agency's services outside of its existing boundaries, or the agency lacks the capacity or ability to serve additional territory or there is insufficient information to make such a determination.
Zero sphere	A zero sphere contains no territory and indicates that the Commission has determined that one or more of the public service functions of the agency are either non-existent, inadequate, no longer needed, or should be reallocated to some other agency of government. Adoption of a zero sphere indicates the agency should ultimately be reorganized or dissolved. The Commission may initiate dissolution of an agency as the law allows.
Smaller-than-agency sphere	Contains less territory than the jurisdictional boundary of the local agency. The smaller-than-agency sphere indicates that territory within the local agency, but not within its sphere, should be detached and either transferred to another local agency or not served by any agency.
Overlapping sphere	If more than one agency appears equally qualified to serve an area, and if fiscal considerations and community input do not clearly favor a specific agency, an overlapping sphere may be appropriate.

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Sphere type	Definition
Provisional sphere	A designation indicating that LAFCo has identified in its most recent municipal service review the need for an agency to address organizational issues. Agencies given a provisional sphere will be encouraged to discuss reorganization options or alternatives to existing service provision or governmental structure and to provide LAFCo with written results of their discussions and/or studies.
Service specific zone within a sphere	To accommodate situations where territory within an agency's jurisdiction may require some, but not all of the services that the agency is authorized to provide, the LAFCo may designate an area within an SOI to which it may attach specific policies, including limiting the types of services authorized in that area. The intent of a service specific zone is to limit the types of services provided in a defined area and is not intended in any way to circumvent annexation.

13.15. LAFCo shall not amend an SOI to include land subject to a California Land Conservation (Williamson) Act contract if the agency provides or will provide public services or facilities not needed for land uses permitted under the contract unless it finds that:

- The change would facilitate planned, orderly and efficient land use patterns or service provision and the benefits substantially outweigh costs associated with potential agricultural land losses; or
- The change is not likely to adversely affect contract continuance beyond its expiration date.

13.16. Prior to including land subject to a Williamson Act contract within the SOI of a service provider, LAFCo shall consider:

- Policies and implementation measures of contract administrators that ensure the continuance of agriculture and other uses permitted under the contract;
- The infrastructure plans of the agency whose SOI is proposed to include such land; and
- Other factors LAFCo deems necessary to render an informed and prudent decision and preserve agricultural land to the maximum extent feasible and appropriate.

13.17. LAFCo shall enact policies designed to promote the logical and orderly development of areas within the SOI of each local governmental agency. Before LAFCo determines new city SOIs, or updates existing city SOIs, city and county representatives shall meet, discuss a proposed SOI and its boundaries, and explore methods to reach agreement on boundaries, development standards, and zoning requirements. An agreement must ensure that development within the SOI reflects city and county needs and concerns, especially agricultural land

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conservation, and promotes the logical and orderly development of areas within the SOI. LAFCO shall give great weight to the city/county agreements and cities and the County will be encouraged to incorporate SOI policies into their respective General Plans as described in Section 56425.

### **Procedures.**

- 13.18. LAFCo shall prioritize pending or anticipated SOI actions and related services reviews, and consider preliminary work plans as part of its annual work plan and budget hearing processes. The Commission will also need to initiate related service reviews. If an SOI is not considered during budget hearings, LAFCo will consider it at a later meeting. The Commission may also need to review or approve final SOI work plans and other processing recommendations.
- 13.19. Agencies will be asked to participate in an SOI scoping session and complete SOI/service review questionnaires relating to its services and plans. The Agency will be required to complete and submit questionnaires within 90 days. Failure to respond within 90 days may be regarded as concurrence with Executive Officer recommendations.
- 13.20. Special districts shall provide written statements specifying the functions or classes of service provided by those districts (§56425(h)(1)).
- 13.21. The Executive Officer will conduct any other necessary scoping meetings, prepare a mailing list, develop and implement approved work plans, and undertake appropriate analysis.
- 13.22. The Executive Officer will provide a copy of its draft SOI to the affected agency and provide at least 30 days for review and comment. After comments are received and considered, the Executive Officer shall finalize the recommended SOI, and issue a staff report with recommendations.
- 13.23. LAFCo shall hear and consider the SOI, and related service reviews if any, at a noticed public hearing. Notice shall be provided at least 21 days prior to the hearing.
- 13.24. Any SOI resolution of determinations shall include a statement with respect to each of the following:
  - The present and planned land uses in the area, including agricultural and open-space lands.
  - The present and probable need for public facilities and services in the area.
  - The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide.



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- The existence of any social or economic communities of interest in the area if the commission determines that they are relevant to the agency.
- The existence of agricultural preserves or other important agricultural or open space land in the area which could be considered within an agency's SOI, and the effect on maintaining the physical and economic integrity of such resources in the event that such resources are within a SOI of a local governmental agency.

13.25. When creating, updating or affirming a special district SOI, LAFCo shall also establish the nature, location, and extent of any functions or classes of service provided by existing districts (§56425(h)(2)).

13.26. Copies of adopted SOIs will be provided to all affected or interested agencies.

### 14. Municipal Service Reviews

Government Code Section 56430 of the Cortese Knox Hertzberg Local Government Reorganization Act of 2000 (CKH) requires LAFCo to prepare municipal service reviews (MSRs) prior to establishing or updating each local agency's sphere of influence (SOI). An MSR provides LAFCo, the public and other agencies information about the local municipal service structure. The MSR provides a tool to comprehensively study existing and projected public service conditions and to evaluate organizational options for accommodating growth, preventing urban sprawl, preserving agricultural and open space lands, and ensuring that critical services are efficiently and effectively provided. 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. However, LAFCo, other local agencies and the public may subsequently use an MSR as the basis to pursue changes of organization or reorganization or sphere of influence amendments.

#### Policies and Standards

14.1. **Services Reviewed**. Alameda LAFCo will conduct MSRs on municipal services associated with growth and urban development including, but not limited to:

- Water
- Wastewater
- Flood control and storm water drainage
- Fire protection
- Police
- Emergency medical, healthcare, vector control and mosquito abatement
- Local transportation, road maintenance and street lighting
- Open space and parks and recreation
- Solid waste
- Electricity
- Animal control

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- Libraries
- 14.2. **Services Not Reviewed.** General government services such as courts, schools, social services, human resources, economic development, treasury, tax collection, elections, and administrative services will not be the subject of MSRs.
- 14.3. **Jurisdiction.** Only local agencies subject to LAFCo will require preparation of MSRs.
- 14.4. **Purpose.** LAFCo shall utilize MSRs to:
- Establish and amend an agency's SOI and as an information resource when considering proposed changes of organization.
  - Learn about service issues and needs and update service provider records;
  - Promote orderly growth and development, encourage infill development, and direct growth to areas planned for growth in General Plans;
  - Provide tools to support planning efforts that address regional, cross county or statewide issues and processes;
  - Develop a structure for dialogue among agencies that provide services and a support network for smaller or ill funded districts that provide valuable services;
  - Develop strategies to avoid unnecessary costs, eliminate waste, and improve public service provision while planning for provision of high quality infrastructure needed to support healthy growth; and
  - Provide ideas about opportunities to streamline service provision through use of shared facilities, approval of different or modified government structures, joint service agreements, shared resource acquisition, joint funding requests or strategies, or integrated land use planning and service delivery programs.
- 14.5. **Preferred Service Providers.** The legislature has found that a single government agency, rather than several limited purpose agencies, is in many cases better able to assess and be accountable for community service needs and financial resources and is the best mechanism for establishing community service priorities (§56001). In the review of proposals, the Cortese-Knox-Hertzberg Act of 2000 requires LAFCo to consider the costs, adequacy and efficiency of service provision (§56668) and the total organization of local government services.

LAFCo shall 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 district.

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4. Consolidation of existing districts.
  5. Annexation to a subsidiary district or County Service Area.
  6. Incorporation of a new city.
  7. Formation of a new multiple purpose district.
  8. Formation of a new county service area.
  9. Formation of a new single purpose district.
- 14.6. **Disadvantaged Unincorporated Communities.** Pursuant to SB244 (Chapter 513, Statutes of 2011), disadvantaged unincorporated communities (DUCs) are inhabited unincorporated areas (containing 12 or more registered voters) where the annual median household income is less than 80 percent of the statewide annual median household income and where infrastructure deficiencies and lack of access to reliable potable water, wastewater and structural fire protection services exist. In conducting MSR, Alameda LAFCo shall rely on Census Designated Places as the basis for determining DUCS or on the county and cities within Alameda County if they have identified DUCs in their respective general plans. LAFCo shall make determinations regarding the location and characteristics of DUCs as well as infrastructure needs or deficiencies related to sewers, municipal and industrial water, and structural fire protection.
- 14.7. **Methodology.** LAFCo will attempt to minimize the number of required service reviews by clustering services or agencies as feasible and appropriate. LAFCo shall use existing information resources and other forms of technical support from the county, cities and special districts when available, and shall stage or tier reviews, and shall employ similar strategies where practical to reduce service review processing costs and timelines.
- 14.8. **CEQA.** In adopting an MSR, LAFCo shall determine whether the MSR is subject to environmental review under CEQA and shall make findings that are consistent with CEQA. Subsequent SOI actions may or may not require additional environmental review.
- 14.9. **Collaboration in Preparation of MSRs.** LAFCo shall encourage collaboration, cooperation and information sharing among service review stakeholders including participation in project scoping, designing the service review, negotiating funding strategies, developing information needs assessment and collection strategies, sharing Best Practices, identifying applicable industry standards, selecting consultants if appropriate, and evaluating technical drafts.
- 14.10. **Active and Latent Power Applicability.** Service reviews shall include evaluations of issues related to activated and latent powers.

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- 14.11. **Non-LAFCo Service Providers.** LAFCo shall encourage private service providers and public or quasi-public providers not subject to LAFCo to fully participate in service review processes.
- 14.12. **Geographic Boundaries.** LAFCo will determine the geographic boundaries and agencies that will be the subject of an MSR. Factors to 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; 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.
- 14.13. **Multi-county MSRs.** An MSR for multi-county service providers (e.g., Dublin San Ramon Services District, East Bay Municipal Utility District, and East Bay Regional Park District) will be prepared by the LAFCo of the principal county in cooperation with the LAFCos an any affected counties.
- 14.14. **Independent Review of Information.** LAFCo shall independently review and verify service review information compiled by other agencies. Appropriate local, state and industry standards, identified during the scoping process, will be used to support analysis of technical data and conditions.

### **Procedures**

- 14.15. LAFCo shall prioritize service reviews and shall provide preliminary work plans and identify funding resources as part of its annual work plan and budget process.
- 14.16. In preparing an MSR, the Executive Officer will conduct scoping meetings, prepare a mailing list, and develop and implement final work plans.
- 14.17. An administrative draft service review may be circulated to subject agency staff for their input regarding the accuracy and completeness of technical information and analysis.
- 14.18. The Executive Officer will issue a draft service review report for public comment which includes service review conclusions and recommendations, and draft recommendations for required written determinations. Written or electronic notice will be provided to any party on the service review mailing list. A 21-day public review period will be provided.

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14.19. The Executive Officer will prepare a staff report with recommendations for Commission consideration.

14.20. LAFCo shall hear and consider the draft service review report and recommendations at a noticed public hearing. Comments received during the public review period and at the public hearing shall be considered. A final MSR shall be presented to the Commission at a subsequent public hearing at which time the Commission may (1) accept and adopt the draft service review as final, approve appropriate recommendations and adopt written determinations in compliance with §56430; (2) direct staff to make further changes to the document in response to public comments or concerns of the Commission; or (3) continue the hearing.

14.21. After Commission approval, the final MSR will be distributed to all affected agencies and interested parties, and posted on the Alameda LAFCo website.

### 15. LAFCo Initiated Special District Studies and Proposals.

#### About Special Districts in Alameda County.

There are 15 independent special districts and 28 dependent special districts subject to Alameda LAFCo jurisdiction. Fifty (50) other special districts, such as joint powers authorities, are not subject to Alameda LAFCo jurisdiction.

#### Independent.

<b>Community Services:</b>	Dublin San Ramon Services District (multi-county)
<b>Fire Protection:</b>	Fairview Fire District
<b>Health Care:</b>	City of Alameda Health Care District Eden Township Health Care District Washington Township Health Care District
<b>Mosquito:</b>	Alameda County Mosquito Abatement District
<b>Municipal Utility:</b>	East Bay Municipal Utility District (multi-county)
<b>Recreation and Parks:</b>	Hayward Area Recreation & Park District Livermore Area Recreation & Parks District East Bay Regional Park District (multi-county)
<b>Resource Conservation:</b>	Alameda County Resource Conservation District
<b>Sanitary:</b>	Castro Valley Sanitary District Oro Loma Sanitary District Union Sanitary District
<b>Water:</b>	Alameda County Water District

#### Dependent.

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Dependent special districts under jurisdiction of the Alameda County Board of Supervisors as of January 2015 are:

<b>Extended Police Protection:</b>	One County Service Area (CSA)
<b>Fire:</b>	Alameda County Fire Department
<b>Flood Control:</b>	Twelve Flood Control Districts
<b>Health:</b>	One emergency medical services CSA; one vector control district CSA
<b>Lead Abatement:</b>	One CSA
<b>Library:</b>	Three CSAs
<b>Public Works:</b>	Eleven CSAs for bridges, street lighting, roads, sidewalk maintenance, sewer, and water services

§56375 authorizes the Commission to initiate special district consolidations, dissolutions, establishments of city subsidiary districts, mergers, or reorganizations. Proposals initiated by the Commission are required to be consistent with recommendations of an SOI study conducted pursuant to §56425, a municipal service review conducted pursuant to §56430, or a government study performed pursuant to §56378.

### Policies.

- 15.1. LAFCo should initiate proposals recommended in service review, SOI, or reorganization committee studies. However, it is preferred that proposals be initiated by petition or proposal of affected citizens or agencies.
- 15.2. LAFCo should conduct SOI updates, service review studies, or other special studies needed to justify LAFCo initiated proposals, if requested by public agencies, interest groups or individuals, and evidence indicates that such study is needed.
- 15.3. Additional factors to be considered in determining whether the Commission will initiate a proposal shall include, but not be limited to, the following:
  - Public concerns have been expressed regarding a district's services or governance that, in the view of the Commission, warrants proposal initiation.
  - Boundaries of existing agencies artificially divide a community of interest or overlap different communities of interest.
  - An appropriate successor agency or agencies is available to assume service responsibilities.
  - The Commission can complete the necessary review, analysis, and processing with its own staff resources, funds which are available from the successor agency or other sources to pay for the additional assistance needed for proposal processing.

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- The district is no longer providing services.
- 15.4. LAFCo shall identify funds for conducting reorganization or SOI studies in cooperation with affected agencies.
- 15.5. No proposal shall be approved unless the Commission finds that:
- Service costs are likely to be less than or substantially similar to the costs of alternative means of providing the service;
  - The proposal promotes public access and accountability for community needs and financial resources (§56881);
  - The proposal furthers service provision that most effectively provides citizens with programs and services that they need and desire; and
  - The proposal is consistent with the determinations of related service reviews
- 15.6. A study may include analysis of any issues considered during service reviews, including but not limited to:
- Potential benefits to the stakeholder(s) such as reduced cost, better or new service, expanded service area;
  - Boundary locations and issues including elimination of overlapping or confusing boundaries, relationship to geography, topography and planned urbanization, and which agencies and services are affected;
  - Functions, classes or types of services, single or multi-purpose service provider and opportunities for expanded services;
  - District's purpose and objectives and assessment of status;
  - Justifications for consolidation;
  - Management, operations, budget processes and infrastructure;
  - Costs of providing the service in terms of labor, overhead, indirect costs, retirement funding, debt service, insurance and other expenses;
  - Personnel issues and considerations such as integration of employees, layoffs or attrition, retirement funding, claims, wages, training and fringe benefits;

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- Short and long term revenue forecasts related to type and source of funding (grants, enterprise or non-enterprise funds, user fees, property tax allocations); and
- Technical and infrastructure characteristics and needs (geography or topography, specialized equipment, technology, condition of infrastructure, condition and use of facilities, land and easements, buildings, equipment or rolling stock).

### Procedures.

- 15.7. Any regular or alternate member of LAFCo, any governmental or non-governmental entity or any individual who is a resident of Alameda County may request that LAFCo initiate a proposal. A request shall be submitted in writing to the Executive Officer. It shall state the nature of the request and provide sufficient detail to support the request.
- 15.8. Upon receipt of such request, the Executive Officer will schedule consideration of the request within sixty days and notify all affected agencies of the hearing time and location.
- 15.9. Prior to the Commission meeting, a meeting will be held with affected agency managers for the purpose of determining whether or not agencies included in the proposal wish to prepare an application package including a preliminary assessment on proposal feasibility. The assessment would contain data, analysis and recommendations; include an identification of core issues; positive and negative service delivery and cost impacts; problems to be solved; and other possible alternative reorganization options, if any. The determinations of an up-to-date service review may be substituted for additional studies if they adequately address all identified issues.
- 15.10. At the public meeting, the Commission will consider any agency-submitted reports or recommendations, studies that may already have been prepared by LAFCo (§56378, §56425, §56430) or a reorganization committee (§56837), and the staff report which may include, to the extent possible, potential service cost savings and a summary of other factors which warrant consideration. The Commission shall provide an opportunity for both applicants and opponents of the request to provide oral and written testimony. The Commission may:
  - Grant the request and adopt a Resolution setting forth the purpose, scope and parameters of any required study; or
  - Continue the hearing or refer the proposal to a reorganization committee as provided for in §56837 or to an advisory committee composed of a representative from each affected district and any additional representatives the Commission deems appropriate for a report and recommendation; or



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- Deny the proposal. If the request is denied, the matter shall not be reconsidered by the Commission for a period of one year.

15.11. At a noticed public hearing, the Commission shall consider the study report and recommendation(s) on the proposal. The Commission shall consider the Executive Officer's report, the report of any reorganization or advisory committee, and comments of affected agencies and the public.

15.12. A resolution of approval must include the determinations that the public service costs are likely to be less than or substantially similar to the costs of alternative means of providing the service; and the proposal promotes public access and accountability for community services needs and financial resources (§56881).

15.13. A vote is required if a sufficient number of registered voters or landowner voters petition for it (10-25% signature requirement) (§57113).

15.14. If the proposal is disapproved, no similar proposal involving the same or substantially the same territory shall be initiated for a period of one (1) year from the date of Commission adoption of the resolution. The Commission may waive this limitation if changes or circumstances warrant reconsideration.

### 16. Out-of-Area Contracts.

A city or special district must receive Commission approval prior to providing a new or extended service beyond its jurisdictional boundary through out-of-area agreements or contracts (§56133). This provision is intended to prevent agencies from bypassing CKH Act provisions. Approval of out-of-area agreements is a discretionary action that is subject to CEQA and must be processed consistent with LAFCo's adopted CEQA procedures.

**Exemptions:** §56133 does not apply to contracts involving two or more public agencies if the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider. It does not apply to contracts for the transfer of non-potable or non-treated water. It does not apply to contracts solely involving the provision of surplus water to agricultural lands for projects that serve conservation purposes, or that directly support agricultural industries. However, if the surplus water would support or induce development, the city or district would have to obtain approval from the Commission prior to extending the service.

### **Policies.**

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- 16.1. LAFCo will encourage jurisdictional changes rather than out-of-area contracts if territory is within a city or district's SOI and can be efficiently served by the agency.
- 16.2. LAFCo delegates approval of out-of-area contracts for temporary services to the Executive Officer if there is a health and safety violation.
- 16.3. LAFCo shall only authorize a city or district to provide new or extended services outside its jurisdictional boundaries and SOI if an existing or pending public health and safety threat exists and:
  - Documentation of the public health and safety threat is provided; and
  - Any alternative service providers have been notified of the pending request (§56133) and are unable or unwilling to provide service.

### **Procedures:**

- 16.4. Only the city or district that is intending to provide or receive service may request approval of out-of-area contracts (§56133).
- 16.5. After an application is deemed complete and acceptable for filing, the Executive Officer shall schedule a hearing and provide notice. The hearing must occur no more than 90 days after the application is deemed complete.
- 16.6. The Commission shall approve, disapprove, approve with conditions or continue the matter for up to 30 days.
- 16.7. An applicant may request reconsideration, citing the reasons for reconsideration. LAFCo shall hear requested reconsiderations.

### **17. Inter-LAFCo Coordination and Agreements.**

The purpose of this multi-county LAFCo procedure is establishment of a cooperative, interactive framework for the processing of multi-county sphere of influence, change of organization or reorganization proposals pursuant to the authority of the Cortese-Knox Act. Specifically, these procedures are to:

- Provide assistance in a Commission's decision making process so that regional, subregional and/or local issues are given appropriate consideration and weight;
- Give applicants guidance as to the type of information a particular LAFCo may need as part of its review and evaluation concerning their applications;
- Ensure consistency in the decision making process;

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- Facilitate communication between principal and non-principal LAFCoS; and
- Acknowledge the importance of Commission decisions in striving to balance social, economic and environmental factors for the benefit of current and future residents and property owners.

### INITIAL PROPOSAL REVIEW BY EXECUTIVE OFFICERS<sup>2</sup>

Prior to the filing of an application or as soon after filing as practical, the applicant is strongly encouraged to meet with the Executive Officer of the county in which the project is located to discuss the scope and components of the proposal. The Executive Officer may advise an applicant that:

- The two Commissions have agreed on a cooperative interactive process for the evaluation and consideration of such an application;
- The applicant is strongly encouraged to contact the other affected LAFCo to discuss and review the proposal;
- This type of application is generally more complex and likely to raise special concerns and questions for one or both Commissions;
- The review, transfer and hearing process may be extended to include a review by an ad-hoc joint Commission Committee so that issues and concerns of one or both Commission's can be adequately discussed and addressed; and
- Each Commission may have a supplemental fee in order to recover actual costs for the additional time and expense associated with processing a multi-county application.

After reviewing the proposal with the applicant, the Executive Officer of the county in which the project is located would, as soon as practical, provide written notification to the other affected Executive Officer as to the scope and nature of the application and include copies of all documents and other information submitted as part of the application. The Executive Officer may provide a copy of the notification to his/her Commissioners for their information and comment, if any. The two Executive Officers will discuss and, if necessary, meet to evaluate the proposal and attempt to reach consensus on which Track is the most appropriate for the processing of the application. The discussion and evaluation may include:

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<sup>2</sup> The Contra Costa and Alameda LAFCoS adopted these policies and procedures in July 1997. Initiation of update discussions and processes will be undertaken separately. In the interim period, these policies and procedures continue to apply.

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- The scope, location and nature of the application;
- A determination of principal and non-principal county designation in accordance with the provisions and definitions of the Cortese-Knox (Hertzberg) Act;
- Whether a request for transfer of jurisdiction is needed; and
- The degree to which the application may be of interest to one or both Commissions.

A tentative calendar for processing and hearing; the processing, transfer and hearing schedule shall not be unreasonably delayed. The scheduling of a special meeting(s) by one or both Commissions may be required in order to consider the proposal.

### **EXECUTIVE OFFICER DETERMINATION AND COMMISSION NOTIFICATION**

The results of the Executive Officer's review will be shared with the respective Commissions on an informational basis along with a recommendation as to the suggested processing Track for the application; the notification also would include a tentative schedule. By statute, any decision regarding a transfer of jurisdiction must be approved by the full Commission; the ad-hoc joint Commission Committee and Executive Officers can only make recommendations.

If there is consensus by the Executive Officers, the applicant will be given written notification as to the processing track and tentative scheduling of the application.

If no consensus can be reached between the two Executive Officers as to which Track is appropriate for the processing of the application, then:

1. The two Executive Officers and Commission Chairs will meet to review and evaluate the specifics of the application and attempt to reach an understanding on the appropriate processing Track; or
2. If no consensus, the Commission Chair who feels the proposal should be considered by the Joint Commission Committee may schedule the item for his/her Commission's next meeting in order to consider whether to formally request the other LAFCo to convene an ad-hoc joint Commission Committee meeting or whether to transfer jurisdiction.

### **APPLICATION PROCESSING TRACKS**

The processing of an application for a sphere of influence, change of organization or reorganization that involves a multi-county jurisdiction will follow one of four Tracks.

#### **TRACK ONE** **SPHERES OF INFLUENCE**

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For a sphere application or amendment, no formal transfer of jurisdiction request will be required. The LAFCo in which the project is located will have decision making authority. The decision making LAFCo will make an effort not to schedule the matter for action so as to preclude the other interested LAFCo from reasonably scheduling the matter for discussion and subsequent submission of comment. The desires of an applicant as to the prospective hearing schedule will be considered but not take precedence over the rights or concerns of the other interested LAFCo. Upon written notification of the application and submission of supporting documentation, the other interested LAFCo may elect to schedule the item at either a regular or special meeting in order to discuss the proposal.

The Commission may exercise its discretionary authority to ask the applicant to be present to present testimony and/or respond to questions or issues concerning the proposal.

The interested LAFCo may elect to exercise its discretionary authority to make comments and/or provide recommendations as to possible terms or conditions which, in their judgment, should be considered by the decision making LAFCo.

### **TRACK TWO** **CHANGES OF ORGANIZATION OR REORGANIZATION WHERE A REQUEST OR TRANSFER OF JURISDICTION IS REQUIRED**

The non-principal LAFCo will submit a written request with appropriate supporting documentation to the principal LAFCo and indicate agreement by the two Executive Officers as to the processing of the application. The principal LAFCo will place the request on the next available agenda for consideration with a staff recommendation to authorize the transfer. The Commission may exercise its discretionary authority to ask the applicant to be present to give testimony and/or respond to questions or issues concerning the proposal. The principal LAFCo will consider and make a decision as to whether to approve the request for a transfer of jurisdiction.

If the transfer is approved, the non-principal LAFCo will assume jurisdiction and final decision-making authority over the application. The Commission may exercise its discretionary authority by including comments and/or providing recommendations as to terms or conditions which in their judgment should be considered by the other LAFCo as part of its decision making process. If the transfer is disapproved, the application may be referred to Track Four so that any outstanding issues and concerns can be addressed under the auspices of the ad-hoc joint Commission Committee process.

### **TRACK THREE** **REORGANIZATION WHERE A REQUEST FOR TRANSFER OF JURISDICTION IS NOT REQUIRED**

The principal LAFCo, defined as meeting the statutory criteria of the Cortese-Knox Act, will submit a written notification with appropriate supporting documentation to the non-

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principal LAFCo along with a tentative hearing schedule. The notification will include a description of the scope and nature of the proposal as well as the anticipated review and hearing dates(s). The principal LAFCo will make an effort not to schedule the matter for action so as to preclude the non-principal LAFCo from reasonably scheduling the matter for discussion and subsequent submission of comment.

The desires of an applicant as to the prospective hearing schedule will be considered but not take precedence over the rights and concerns of the non-principal LAFCo.

The non-principal LAFCo may, at its option, elect to place the matter on its next available agenda or call a special meeting in order to formally discuss and evaluate the proposal and any potential impacts upon County residents and services. The non-principal LAFCo may elect to exercise its discretionary authority to make comments and/or provide recommendations as to possible terms or conditions to the principal LAFCo for consideration as part of their decision making process.

### **TRACK FOUR** **REFERRAL TO AD-HOC JOINT COMMISSION COMMITTEE**

A sphere of influence, change of organization or reorganization proposal will be referred to an ad-hoc joint Commission Committee if it meets one or more of the following criteria:

- One or both Executive Officers perceive that the nature, scope or interest in the proposal is such that it warrants referral; or
- The Commission Chairs and/or the respective Commissions have determined that it would be in the best interests of their Commission to have the proposal referred to the ad-hoc joint Commission Committee.

The ad-hoc joint Commission Committee will be convened on an “as needed” basis. The Committee will be comprised of two members from each LAFCo. Appointments will be made by the respective Commission Chairs in accordance with individual Commission policies and practices.

The Executive Officers will, as soon as practical, schedule a meeting of the ad-hoc joint Commission Committee. The meeting will be public and noticed in accordance with applicable State open meeting statutes. The applicant, proponents, opponents and other interested parties will be notified of the meeting. A staff summary document of the proposal will be prepared and include any supporting documents that may be of interest to the Committee members.

The meeting will be scheduled within an appropriate time frame so as to not unduly delay the processing of the application; however, scheduling will not be at the expense of nor compromise fulfillment of the ad-hoc joint Commission Committee's responsibilities. In its review and evaluation of the proposal, the ad-hoc joint Commission Committee will have as its purpose and focus regional, subregional and

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local issues, questions and concerns which may emanate from such a multi-county jurisdictional proposal. The ad-hoc joint Commission Committee will have discretion to schedule additional meetings if determined to be appropriate and necessary for their full consideration of the issues.

The ad-hoc joint Commission Committee will submit to each of the Commissions a written report on the results of the meeting as well as a non-binding consensus opinion, if appropriate, with respect to the merits of the proposal and the appropriateness of a transfer of jurisdiction. The consensus opinion also may include suggested terms and conditions that may be taken into consideration by the principal LAFCo as part of its decision making process. If there is no consensus opinion, the report would reflect this fact.

Upon completion of the work of the ad-hoc joint Commission Committee and depending on whether the matter was a sphere of influence, change of organization or reorganization proposal, the application would continue to be processed in accordance the procedures as set forth for Tracks One, Two or Three.

In accordance with State statutes, the final decision making authority rests with the Commission that has jurisdiction over the matter. The Executive Officers and the ad-hoc joint Committee can only make recommendations.