

**EXECUTIVE OFFICER'S AGENDA REPORT  
APRIL 22, 2020**

TO: LAFCO Commissioners  
FROM: Sara Lytle-Pinhey, Executive Officer *SLP*  
SUBJECT: **POLICIES AND PROCEDURES UPDATE**

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**RECOMMENDATION**

It is recommended that the Commission approve the Policies and Procedures update, as included in Exhibit A.

**DISCUSSION**

Government Code section 56300(a) requires each LAFCO to establish written policies and procedures that encourage and provide for well-ordered and efficient urban development patterns as well as the preservation of open space and agricultural land. Staff regularly proposes updates to the Policies and Procedures document to reflect changes to State law. The current update to the Commission's Policies and Procedures is recommended to remain consistent with State law.

**SUMMARY OF PROPOSED UPDATES**

The proposed updates to the Commission's Policies and Procedures are attached as Exhibit A. Deletions are represented with stricken text and additions are represented by double underlined text. The following is summary of the proposed updates:

**Section 2 – Statutes Governing LAFCO**

- **Cortese-Knox-Hertzberg Local Government Reorganization Act**  
An update was made to Government Code Section 56301, quoted in the Commission's policies, clarifying that among the purposes of LAFCO are "encouraging the efficient provision of government services." That section was previously written without the word "encouraging" and made it sound as though the Commission was directly providing services.
- **Spheres of Influence & Municipal Service Reviews**  
Minor updates were made to paragraphs in this section clarifying the timing for review of spheres of influence and the requirement that a municipal service review be conducted prior to or in conjunction with a sphere of influence establishment or update. These are consistent with Government Code Sections 56425 and 56430(e).
- **Factors LAFCO Must Consider**  
Minor updates were made to this section to match Government Code Section 56668. Notably, the factor regarding environmental justice includes an expanded definition. A factor requiring consideration of a local hazard mitigation plan, safety element of a general plan, and fire safety hazard zones was also added.

## **Section 4 – General Powers and Policy Guidelines**

- **Policy 2 – Powers**

This policy described an exception to the Commission’s powers related to annexations contiguous to disadvantaged unincorporated communities. The law previously prohibited the Commission from approving an annexation to a city of any territory greater than 10 acres that was contiguous to the proposed annexation area unless it was accompanied by an application to annex the entire community or evidence was shown that voters in the area opposed annexation. Assembly Bill 600 (Chu) expanded on this prohibition, effective January 1, 2020, adding that the Commission cannot approve two or more annexations that take place within 5 years of each other and are cumulatively larger than 10 acres.

- **Policy 17 – Island Annexations**

Minor edits were made to this section to reflect the process for streamlined island annexations, as outlined in Government Code Section 56375.3. This section previously had a sunset clause for annexations initiated prior to 2014. This has been removed for clarity.

## **ENVIRONMENTAL ANALYSIS & REVIEW**

The adoption of this Policies and Procedures update is considered to be continuing administrative or maintenance activity with no potential for a direct or indirect physical change to the environment. It is therefore not a “project” for the purposes of the California Environmental Quality Act (CEQA), pursuant to Section 15378(b)(2).

Although not subject to CEQA, the proposed Policy and Procedures update was referred to each of the nine cities and the County. No comments have been received as of the drafting of this report.

## **COMMISSION ACTION**

Staff recommends that the Commission, following the public hearing and consideration of all relevant information presented, approve the proposed update and adopt Resolution 2020-02 (attached as Exhibit B), which:

1. Finds that the proposed Policy and Procedures update is consistent with State Law as well as the overall goals of LAFCO;
2. Finds that the proposed Policy and Procedures update is not a project for the purposes of the California Environmental Quality Act (CEQA) pursuant to Section 15378(b)(2); and,
3. Adopts the proposed Policy and Procedures update to be effective immediately.

Attachments: Exhibit A: Proposed Policy & Procedures Update  
Exhibit B: Draft Resolution 2020-02

## SECTION 2—STATUTES GOVERNING LAFCO

### CORTESE-KNOX-HERTZBERG LOCAL GOVERNMENT REORGANIZATION ACT

The statutes governing the activities of the Local Agency Formation Commission are found under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH Act). The declared state policy for LAFCO is found in Section 56301 of the Government Code:

*Among the purposes of a commission are discouraging urban sprawl, preserving open-space and prime agricultural lands, ~~efficiently providing~~ encouraging the efficient provision of government services, and encouraging the orderly formation and development of local agencies based upon local conditions and circumstances. One of the objects of the commission is to make studies and to obtain and furnish information which will contribute to the logical and reasonable development of local agencies in each county and to shape the development of local agencies so as to advantageously provide for present and future needs of each county and its communities.*

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Consistent with update to Government Code Section (GCS) 56301

The Cortese-Knox-Hertzberg Act gives LAFCO the authority to approve (with or without amendment, wholly, partially, or conditionally) or disapprove, a wide variety of proposals for jurisdictional change (Government Code Section 56375). These include, but are not limited to, proposals for:

- Annexation of territory to cities or special districts.
- Exclusion of land from cities or special districts.
- The consolidation of two or more cities, or two or more special districts.
- The formation of new special districts and the incorporation of new cities.
- The dissolution of special districts and disincorporation of cities.
- The merger of cities and special districts.
- Reorganizations which involve boundary changes to two or more cities or special districts as part of one proceeding.
- Review and approval or denial of city or special district contracts for service outside their boundaries.

In addition to these review powers, the Commission has the authority to initiate and make studies of existing governmental agencies, which may include inventorying such agencies. As of July 1, 1994, based upon the findings of its special studies, the Commission has the authority to initiate proposals for consolidation of special districts, the merger of a special district with a city, the dissolution of a special district, the establishment of a subsidiary special district, or a reorganization, which includes any of these outlined changes. (Government Code Section 56378)

The Act provides the following powers and duties, among others, to LAFCO:

1. To review and approve or disapprove with or without amendment, wholly, partially, or conditionally, proposals for changes of organization or reorganization, consistent with written policies, procedures, and guidelines adopted by the Commission. A Commission shall have the authority to initiate only any of the following proposals: (1) consolidation of districts, as defined in Government Code Section 56036, (2) dissolution, (3) merger, (4) establishment of a subsidiary district, (5) formation of a new district or districts, or (6) a reorganization that includes any of these changes of organization, if that change of organization or reorganization is consistent with a recommendation or conclusion of a study prepared pursuant to state law (Government Code Sections 56378, 56425 or 56430, and 56881). (*Amended January 23, 2008*)
2. To determine whether territory proposed for annexation or detachment, or municipal reorganization is inhabited or uninhabited. (“Inhabited” means an area that contains twelve or more registered voters.)
3. With regard to a proposal for consolidation of two or more cities or special districts, to determine which city or district shall be the consolidated, successor city or district.
4. To waive the statutory restrictions against creation of islands (unincorporated areas totally or substantially surrounded by city boundaries) if the Commission finds that the application of the restrictions would be detrimental to the orderly development of the community and that the area would be enclosed as a result of incorporation or annexation and is so located that it cannot reasonably be annexed to another city or incorporated as a new city.
5. To approve the annexation of unincorporated, noncontiguous territory not exceeding 300 acres in area, located in the same county as that in which the city is located, and which is owned by a city and used for municipal purposes; and to authorize the annexation of such territory without notice or hearing. In addition, the Commission has the authority to approve the annexation of noncontiguous territory that is used as a state correctional facility, with no acreage limitation.
6. To establish spheres of influence for all cities and special districts within the county, and to review those spheres of influence ~~at least once every five years~~ every five years thereafter, as necessary.
7. To conduct “municipal service reviews” on a regional or sub-regional basis, evaluating infrastructure needs or deficiencies, growth and population projections, financing constraints and opportunities, and other issues. These reviews ~~can occur in conjunction with sphere of influence studies, and must be conducted as least once every five years~~ shall be conducted before or in conjunction with the establishment or update of a sphere of influence.

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Updated consistent with  
GCS 56425(g)

**Commented [SL3]:**  
Updated consistent with  
GCS 56430(e)

## FACTORS LAFCO MUST CONSIDER

State law provides a wide variety of factors that the Commission must consider in the review of a proposal. These are specified in Government Code Section 56668, and include, but are not limited to the following:

- (a) Population and population density; land area and land use; ~~per capita~~ assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; and the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas, during the next 10 years.
- (b) The need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; and probable effect of the proposed incorporation, formation, annexation, or exclusion and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas. "Services," as used in this subdivision, refers to governmental services whether or not the services area services which would be provided by local agencies subject to this division, and includes the public facilities necessary to provide those services.
- (c) The effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county.
- (d) The conformity of both the proposal and its anticipated effects with both the adopted commission policies on providing planned, orderly, efficient patterns of urban development, and the policies and priorities set forth in Section 56377 (open space land conservation).
- (e) The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by Section 56016.
- (f) The definiteness and certainty of the boundaries of the territory, the nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory, and other similar matters affecting the proposed boundaries.

~~(g)~~ (g) A regional transportation plan adopted pursuant to Section 65080, ~~and~~

~~(g)~~(h) The proposal's consistency with city or county general and specific plans.

~~(h)~~(i) The sphere of influence any local agency ~~which that~~ may be applicable to the proposal being reviewed.

~~(i)~~(j) The comments of any affected local agency or other public agency.

~~(j)~~(k) The ability of the newly formed or receiving entity to provide the services ~~which that~~ are the subject of the application to the area, including the sufficiency of revenues for those services following the proposed boundary change.

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Minor updates made to reflect 2018-2019 changes to GCS 56668, including addition of factor considering hazards & safety

~~(k)~~(l) Timely availability of water supplies adequate for projected needs as specified in Section 65352.5.

~~(h)~~(m) The extent to which the proposal will affect a city or cities and the county in achieving their respective fair shares of the regional housing needs as determined by the appropriate council of governments consistent with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7.

~~(m)~~(n) Any information or comments from the landowner or landowners, voters, or residents of the affected territory.

~~(n)~~(o) Any information relating to the existing land use designations.

(p) The extent to which the proposal will promote environmental justice. As used in this subdivision, “environmental justice” means the fair treatment and meaningful involvement of people of all races, cultures, and incomes, and national origins, with respect to the location of public facilities and the provision of public services, to ensure a healthy environment for all people such that the effects of pollution are not disproportionately borne by any particular populations or communities. *(Amended January 23, 2008)*

~~(e)~~(q) Information contained in a local hazard mitigation plan, information contained in a safety element of a general plan, and any maps that identify land as a very high fire hazard zone pursuant to Section 51178 or maps that identify land determined to be in a state responsibility area pursuant to Section 4102 of the Public Resources Code, if it is determined that such information is relevant to the area that is subject of the proposal.

## **CONDITIONS WHICH MAY BE IMPOSED**

In the approval of boundary change proposals, LAFCOs have strong powers to attach conditions. Government Code Section 56885.5 through Section 56890 provides a broad range of conditions that the Commission may impose in approving an application. Those conditions range from the authority to impose special assessments to the transfer of employees among districts in a consolidation. The reader is referred to the specific Code Sections for the complete conditions authorized by statute.

The following are a few examples of how authorized conditions may be applied:

- LAFCO can require as a condition of approval, that the territory being annexed shall be responsible for payment of existing fees, charges, or assessments currently in place by the annexing agency.
- LAFCO can require as a condition of its approval that another change of organization for a related or overlapping agency be initiated, conducted, and completed. For example, if a proposal is for annexation of territory to a city, LAFCO can require that the territory also be annexed to or detached from special districts.
- LAFCO can require establishment of special assessments or improvement districts to finance capital facilities or improvements needed in affected territory.

- LAFCO can impose conditions related to the distribution of assets, financial contracts or obligations among affected agencies.
- LAFCO may impose conditions related to a local agency's employee salaries, benefits, and other personnel rights.
- LAFCO can impose a condition designating the method for selection of the Board of Directors and the number of Directors for a consolidated district.
- LAFCO can impose a condition that establishes the effective date for a change of organization.
- LAFCO can impose a condition that designates the agency to succeed to the rights, duties, and obligations of an agency that is dissolved.

### **ENVIRONMENTAL REVIEW REQUIREMENTS**

LAFCO is subject to and under the jurisdiction of the California Environmental Quality Act (CEQA), as are most public agencies. The statute requires certain procedures to be followed in terms of environmental review and the opportunity for public participation in the decision-making process.

### **POWERS AND DUTIES OF THE COMMISSION IN CONDUCTING PROTEST PROCEEDINGS**

Government Code Section 57000 (effective January 1, 2001) requires the Commission to conduct "protest proceedings" to determine whether the proposal can be ultimately approved without an election, whether an election should be held, or whether the proposal must be terminated due to majority protest. This is purely a ministerial process, where the Commission simply counts the written protest submitted to an action, determines the percentage that the landowner or voter protest bears to the total number of landowners and/or voters, and takes action based on that level of protest. Because this is a ministerial process, on February 28, 2001, the Commission delegated all the responsibility for conducting the protest proceedings to the Executive Officer. The process for conducting protest proceedings is outlined in Appendix A.

## SECTION 4—GENERAL POWERS AND POLICY GUIDELINES

The Local Agency Formation Commission is a state-mandated entity, established for each county in the State and is independent of local county, city, or district governmental jurisdiction. (Government Code Section 56001 and 56300)

The Cortese-Knox-Hertzberg (CKH) Act requires that each LAFCO establish policies and procedures. The CKH Act also states that LAFCOs are to exercise their powers consistent with those policies and procedures.

The policies and procedures in this document are intended to reflect the legislative intent of the CKH Act and provide for the consistent implementation based upon local conditions and circumstances and are intended to supplement state law. To the extent that any portion of this document conflicts with any provisions of state law, the applicable state law takes precedence. (*Amended August 27, 2003*)

### **POLICY 1 - PURPOSE**

The purposes of the Local Agency Formation Commission are provided by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, and include the following:

- Discourage urban sprawl.
- Encourage orderly formation and development of local governmental agencies, based on local conditions and circumstances.
- Initiate and make studies of governmental agencies.
- Adopt spheres of influence for each local governmental agency.

The following Goals will guide the Commission in implementing the purposes of LAFCO (*Amended April 23, 2003*):

1. To encourage planned, well-ordered, efficient development patterns.
2. To encourage efficient and effective delivery of governmental services by the agencies who provide those services.
3. To encourage urban land use patterns which balance urban growth with the conservation of open space and prime agricultural land.
4. To encourage the cities and the County to plan urban land use patterns, which include a harmony between housing for residents and jobs provided by commercial and industrial development.

## POLICY 2 - POWERS

~~The powers of LAFGO include the following:~~

A. The Commission's powers include the ability to rReview and approve proposals with or without amendment, wholly, partially, or conditionally, or disapprove proposals for changes of organization or reorganization, consistent with written policies, procedures, and guidelines adopted by the Ceommission (Government Code Section 56375). Types of proposals include, but are not limited to:

- Annexation of territory to cities or special districts.
- Exclusion of land from cities or special districts.
- The consolidation of two or more cities, or two or more special districts.
- The formation of new special districts and the incorporation of new cities.
- The dissolution of special districts and disincorporation of cities.
- The merger of cities and special districts.
- Reorganizations which involve boundary changes to two or more cities or special districts as part of one proceeding.
- ~~Review of c~~City or special district ~~contracts for service~~ extensions of service outside of their boundaries.
- ~~Review and approve p~~Proposals that would extend services into previously unserved territory within unincorporated areas.
- ~~The Commission shall not approve an annexation to a city of any territory greater than 10 acres, or as determined by commission policy, where there exists a disadvantaged unincorporated community that is contiguous to the area of proposed annexation, unless an application to annex the disadvantaged unincorporated community to the subject city has been filed with the executive officer. However, an application to annex a contiguous disadvantaged community shall not be required if either of the following apply: (i) A prior application for annexation of the same disadvantaged community has been made in the proceeding five years; or (ii) The commission finds, based upon written evidence, that a majority of the residents within the affected territory are opposed to annexation. (Government Code Section 56375 (8)(A)(B))~~
- The annexation of territory served by a mutual water company that operated a public water system to a city or special district. (Government Code Section 56375 (r))

1. Notwithstanding the above powers, the Commission shall not approve an annexation to a city of any territory greater than 10 acres where there exists a disadvantaged unincorporated community that is contiguous to the area of proposed annexation, unless an application to annex the disadvantaged

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Paragraph moved into a sub-section as it is an exception to the Commission's powers

unincorporated community to the subject city has been filed with the executive officer. Additionally, the Commission shall not approve annexation of two or more areas within five years that would cumulatively exceed 10 acres unless such an application has also been made. However, an application to annex a contiguous disadvantaged community shall not be required if either of the following apply: (i) A prior application for annexation of the same disadvantaged community has been made in the proceeding five years; or (ii) The commission finds, based upon written evidence, that a majority of the residents within the affected territory are opposed to annexation. (Government Code Section 56375(8))

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This additional constraint was added as a result of AB-600 (Chu).

B. The Commission shall also have the power to:

- Conduct service reviews of the municipal services provided in the county on a regional or sub-regional basis, and provide written statements with respect to infrastructure needs, growth and population projections, financing constraints, cost avoidance opportunities, opportunities for shared facilities, and other factors in Government Code Section 56430.
- Initiate and make studies of existing governmental agencies, which may include inventorying such agencies. (Government Code Section 56378)
- Initiate proposals for consolidation of special districts, the merger of a special district with a city, the dissolution of a special district, the establishment of a subsidiary special district, or a reorganization, when consistent with a recommendation or conclusion of study prepared pursuant to Government Code Section 56378, 56425, or 56430, and the commission makes the required determinations, pursuant to Government Code Section 56881(b).
- Adopt Evaluation Standards and procedures for the evaluation of proposals which shall include, but are not limited to, the factors identified in Government Code Section 56668. (See also: Section 2—Statutes Governing LAFCO.)

C. **Plan for Service Requirement.** A plan for service shall be prepared and submitted for each local agency affected by a proposed change of organization, regardless of whether that proposal is initiated by resolution or petition. In the case of a proposed annexation, the plan for service must include information that the range and level of services currently available within the study area will, at least, be maintained by the annexing agency. Services include all those services currently provided or to be extended by the agency. For those proposals involving a reorganization consisting of annexations to multiple agencies, the plan for service shall include information for each affected agency. (Government Code Section 56653)

LAFCO will consider the ability of an agency to deliver adequate, reliable and sustainable services and will not approve a proposal that has potential to significantly diminish the level of service in the agency's current jurisdiction. The agency will be required to provide satisfactory documentation of capacity to provide the service within a reasonable period of time. (*Amended April 23, 2003*)

- D. **Spheres of Influence.** Government Code Section 56425 requires that LAFCO establish a sphere of influence for each city and special district in the county.
- E. **Two or More Proposals for The Same Area.** If two or more proposals pending before the Commission conflict or are in any way inconsistent with each other, the Commission may determine the relative priority for conducting further proceedings on these proposals. In the absence of any such determination, priority shall be given to that action which was first filed with the Executive Officer. (Government Code Sections 56655, 56657 and 57003)
- F. **Reorganization Committee.** The Commission may require the establishment of a reorganization committee for reorganization proposals and to adopt standards and procedures for the evaluation of any plan of reorganization or alternate plan reported on by such committee. (Government Code Section 56827)
- G. **Conduct Special Studies.** The Commission may initiate and make studies of existing governmental agencies including, but not limited to, inventorying such agencies and determining their maximum service area and service capacities.
- H. **Open Space.** It is the intent of the Legislature that Commissions establish policies and exercise their powers so as to encourage and provide planned, well ordered, efficient urban development patterns with appropriate consideration of preserving open space lands within such patterns. (Government Code Section 56001)
- I. **Conducting Authority.** The Cortese-Knox-Hertzberg Local Government Reorganization Act, taking effect on January 1, 2001, assigned the responsibility of conducting protest proceedings to the Commission itself. The Commission has determined to delegate this authority to the Executive Officer. (Government Code Section 56029)
- J. **Noncontiguous Territory Annexation.** The Commission has the authority to approve the annexation of unincorporated noncontiguous territory, in accordance with Government Code Section 56742, for proposals not exceeding 300 acres in area, located in the same County, and which is owned by the annexing city and used for municipal purposes.
- K. **Inhabited Annexation.** In an inhabited annexation to a city, where the area to be annexed equals 50% or more of the assessed value of the city, or the number of registered voters in the area to be annexed is 50% or more than the number of registered voters in the city, the Commission may determine as a condition of the proposal that the annexation shall be subject to the confirmation of the voters in the area to be annexed and the voters of the city. (Government Code Section 56737)
- L. **Distribution of Assets and Liabilities.** The Commission may determine the distribution of all assets and liabilities, including recommendations for retaining employees, for all consolidations, mergers, dissolutions, and creations of subsidiary districts, or any other proposal, and shall note such distribution in its resolutions. (Government Code Section 56886)
- M. **Consolidation of Cities.** After approval for the consolidation of two or more cities, the Commission will determine which shall be the consolidated successor city.

- N. **Financial Assistance.** The Commission, or the Board of Supervisors on behalf of the Commission, is authorized to apply for or accept, or both, any financial assistance and grants-in-aid from public or private agencies or from the state and federal governments or from a local government. (Government Code Section 56378)

### **POLICY 3 - ENVIRONMENTAL ASSESSMENT**

The Commission will insure that all proposals are reviewed in compliance with the California Environmental Quality Act (CEQA) and Commission adopted CEQA procedures.

### **POLICY 4 - PRIORITIES FOR ANNEXATION AND FORMATION**

The Commission will consider the following priorities or guidelines for annexation and formation with the provision that overriding circumstances must be stated in exceptions (Government Code Section 56001):

- A. Annexation to an existing city or district instead of formation of a new agency.
- B. Annexation to a city rather than a district if both can provide comparable services.
- C. Annexation to a multi-purpose district in preference to annexation to a single purpose district.
- D. Formation of a new political entity as the last and least desirable alternative.

### **POLICY 5 – PRE-ZONING FOR CITY ANNEXATION**

Effective January 1, 2001, rezoning is mandated by Government Code Section 56375. No city annexation application will be deemed complete unless the rezoning process has been completed. The decision of the Commission with regard to a proposal to annex territory to a city shall be based upon the general plan and rezoning of the city.

In addition, pursuant to Government Code Section 56375(e), all rezoning designations shall remain in effect for at least two years unless the City Council makes specified findings relating to changed conditions and circumstances.

The adopted procedure for rezoning is as follows:

- A. Rezoning shall require that the city become the lead agency for environmental review for the proposed change and shall prepare and submit to LAFCO the environmental assessment forms in sufficient time for LAFCO's Executive Officer to comment before a determination of environmental effects is made.

### **POLICY 6 - CONCURRENT CITY- DISTRICT ANNEXATION**

For any annexation within a community served by a variety of community-based local agencies, the Commission shall require concurrent annexation to all of the local agencies serving the community (concurrent city/district annexations).

### **POLICY 7 - SPECIAL DISTRICT REPRESENTATION**

The Commission has adopted “Rules and Regulations” pursuant to Government Code Section 56332 which permits Special District Representation on the Commission. The Rules and Regulations are included in Section Six of this manual.

### **POLICY 8 - SUFFICIENCY OF SIGNATURES ON PETITIONS AND NUMBER OF REGISTERED VOTERS**

The Commission recognizes that the review and approval process for many proposals may be changed, and the number of registered voters affected (Government Code Section 56706):

- A. For proposals which require petitions to be circulated, after LAFCO approval, the number of registered voters residing in an area on the date of LAFCO approval is the number of registered voters on which the sufficiency of any petition is based. If the proposal was initiated by Resolution of Application, the number of registered voters shall be based on the date the Notice of Filing is issued.
- B. For proposals in which petitions are circulated prior to LAFCO approval and for the determination of inhabited or uninhabited actions, the date of the Notice of Filing issued by LAFCO shall be the determining date for the number of registered voters residing within the affected area.

### **POLICY 9 - EFFECTIVE DATE OF THE CERTIFICATE OF COMPLETION**

Unless otherwise specified by the Commission, the effective date for all actions shall be the date of issuance of the Certificate of Completion. (Government Code Section 57202)

### **POLICY 10 - REQUESTS FOR RECONSIDERATION**

Requests for reconsideration will be granted only when the petitioner can present some compelling new evidence which shall show what new or different facts exist that could not have been previously presented or the existence of an applicable new law which shows that significant factors relative to the situation were overlooked or have changed. The request shall be submitted in writing to the Executive Officer within 30 days of the Commission’s decision. (Government Code Section 56895)

No request shall be deemed filed unless appropriate filing fees are submitted. In the event multiple requests for reconsideration are filed, the Executive Officer will divide a single reconsideration fee among the various petitioners for reconsideration.

The adopted procedure for reconsideration requests is as follows:

- A. Upon receipt of a legally filed request for reconsideration, the Executive Officer shall place the request on the agenda of the next Commission meeting for which notice can be provided. At the hearing, the Executive Officer will present the staff report and recommendations to the Commission and respond to questions. The Commission will then allow submission of any oral or written testimony on the issue; however, at the Chair’s discretion, time limits may be placed on those wishing to provide an oral presentation. At the close of the hearing, the Commission may take one of the following actions:

1. The Commission may approve the request, and adopt a resolution superseding the resolution previously issued;
2. The Commission may deny the request; or,
3. The Commission may continue the hearing to a time not to exceed 35 days from the date specified in the notice.

**POLICY 11** *(Removed as of January 24, 2018)*

**POLICY 12 - WAIVER OF FILING FEES**

Pursuant to Government Code Section 56383, the Commission may reduce or waive a fee, service charge, or deposit if it finds that payment would be detrimental to the public interest. The reduction or waiver of any fee, service charge or deposit is limited to the costs incurred by the Commission in the proceedings of an application.

A request for waiver or reduction of LAFCO filing fees must be submitted in writing to the Executive Officer and contain specific reasons for the request along with the submission of the application.

Upon receipt of such a request, the Executive Officer shall present the waiver/reduction request at the next regular hearing for Commission consideration. Processing of an application for a jurisdictional change shall be held in abeyance until a decision is rendered by the Commission regarding the appeal of fees.

Circumstances that may support the granting of a deposit fee waiver or reduction in processing fees and/or service charges are as follows:

- A. Correction of a technical boundary alignment problem (split parcel, boundary overlap, etc.).
- B. Proposals seeking to accomplish a defined Commission goal or policy. This includes petition-initiated proposals to annex unincorporated territory that is totally or substantially surrounded by city boundaries.
- C. Proposals initiated by the Stanislaus County Board of Supervisors, City Council, or Special District for public facilities owned by that agency.
- D. Proposals initiated by Resolution of Application of a city seeking to annex unincorporated territory that is totally or substantially surrounded by city boundaries.
- E. Proposals initiated by individuals which were modified by the Commission and subsequently terminated through no fault of the proponents by majority protest or an election.

**POLICY 13 - LEGAL DEFENSE FEE RESPONSIBILITY**

It is the policy of this Commission that the costs for legal defense of an issue, which has been approved by the Commission, should be the primary responsibility of the agency or person seeking that approval.

Therefore, as a condition of approval of any action taken by the Local Agency Formation Commission, the Commission may impose a condition within its resolution of approval that requires the applicant to defend, indemnify, hold harmless, and provide for reimbursement or assumption of all legal costs in connection with that approval. The adopted procedure for the Legal Defense Policy is as follows (*Amended April 23, 2003*):

- A. The Commission will impose a condition of approval which requires the applicant to defend, indemnify, and hold harmless the Commission, its agents, and its employees from any claim, action or proceedings against them to attack, set aside, void, or annul such approval.
- B. The Executive Officer shall promptly notify the applicant of any legal action brought challenging the Commission's action, and the Commission, its agents, and employees shall cooperate fully in the defense of that action.

#### **POLICY 14 - INCORPORATION POLICIES**

The following are the policy statements that the Commission has adopted to assist in the guidance of unincorporated communities in their review of governmental options:

- A. Incorporation proposals involving land within an existing city sphere of influence will not be accepted for filing. If a cityhood proposal would conflict with an established city's sphere of influence, the incorporation proponents must first initiate, and the Commission must approve, a sphere of influence amendment to exclude the study area from that sphere prior to circulation of formal incorporation petitions.
- B. The Commission defines "financial feasibility" to mean the ability of a new city to maintain pre-incorporation service levels, with sufficient resources to provide a municipal-level law enforcement service consistent with the recommendations of the County Sheriff.
- C. In determining feasibility, the Commission will consider only those revenues that are currently available to all general law cities. It will not consider revenues derived through special taxes or assessments, nor will it consider hypothetical revenues available through possible actions of a future city council (e.g., utility user's taxes) in the determination of financial feasibility.
- D. In determining feasibility, the Commission requires that proposed staff salary costs shall be based on an average of similar-sized cities or those cities which have the most comparable population within Stanislaus and San Joaquin Counties.
- E. In determining compliance with Government Code Section 56720, the Commission finds that a "reasonable reserve" is a contingency fund equal to 10% of the projected general and special funds of the new city.
- F. The Commission requires that a new city shall assume jurisdiction over all community-based special districts serving the incorporation area. A clear and compelling rationale must be provided if the continued overlay of a community-based district is proposed.

- G. In order to qualify for incorporation, the community in question must contain a minimum of 10,000 people as determined by available census data or other reliable means (e.g. utility connections), and the sales tax revenues attributable to the study area must at least cover the expected administrative and legislative costs of the new city.

**POLICY 15 - OUT-OF-BOUNDARY SERVICE CONTRACTS OR AGREEMENTS**

*(Amended January 24, 2018)*

Government Code Section 56133 (Cortese-Knox-Hertzberg Act) specifies that a city or special district must apply for and obtain LAFCO approval before providing new or extended services outside its jurisdictional boundaries. The Commission will consider this policy in addition to the provisions of Government Code Section 56133 when reviewing out-of-boundary service extension requests.

- A. Pursuant to Government Code Section 56133(b), the Commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries, but within its sphere of influence, in anticipation of a later change of organization. The Commission may authorize a city or district to provide new or extended services outside its sphere of influence to respond to an existing or impending threat to the public health or safety of the residents of the affected territory in accordance with Government Code Section 56133(c).
- B. The Commission has determined that the Executive Officer shall have the authority to approve, or conditionally approve, proposals to extend services outside jurisdictional boundaries in cases where the service extension is proposed to remedy a clear health and safety concern for existing development.

In cases where the Executive Officer recommends denial of such a proposed service extension or where the proposal will facilitate new development, that proposal shall be placed on the next agenda for which notice can be provided so that it may be considered by the Commission. After the public hearing, the Commission may approve, conditionally approve, or deny the proposal.

- C. Considerations for Approving Agreements: Annexations to cities and special districts are generally preferred for providing public services; however, out-of-boundary service extensions can be an appropriate alternative. While each proposal must be decided on its own merits, the Commission may favorably consider such service extensions in the following situations:
  - 1. Services will be provided to a small portion of a larger parcel and annexation of the entire parcel would be inappropriate in terms of orderly boundaries, adopted land use plans, open space/greenbelt agreements or other relevant factors.
  - 2. Lack of contiguity makes annexation infeasible given current boundaries and the requested public service is justified based on adopted land use plans or other entitlements for use.
  - 3. Where public agencies have a formal agreement defining service areas provided LAFCO has formally recognized the boundaries of the area.

4. Emergency or health related conditions mitigate against waiting for annexation.
  5. Other circumstances which are consistent with the statutory purposes and the policies and standards of the Stanislaus LAFCO.
- D. Health or Safety Concerns: The requirements contained in Section 56133(c) of the Government Code will be followed in the review of proposals to serve territory with municipal services outside the local agency's sphere of influence. Service extensions outside a local agency's sphere of influence will not be approved unless there is a documented existing or impending threat to public health and safety, and the request meets one or more of the following criteria as outlined below:
1. The lack of the service being requested constitutes an existing or impending health and safety concern.
  2. The property is currently developed.
  3. No future expansion of service will be permitted without approval from the LAFCO.
- E. Agreements Consenting to Annex: Whenever the affected property may ultimately be annexed to the service agency, a standard condition for approval of an out-of-boundary service extension is recordation of an agreement by the landowner consenting to annex the territory, which agreement shall inure to future owners of the property.
1. The Commission may waive this requirement on a case-by-case basis upon concurrence of the agency proposing to provide out-of-boundary services.
  2. The Commission has determined, pursuant to Government Code Section 56133(b) that the Beard Industrial Area shall not be subject to the requirement for consent-to-annex agreements, based on the historical land use of the area and its location within the Sphere of Influence of the City of Modesto.
- F. Area-wide Approvals: The Commission has recognized and approved extensions of sewer and/or water services to specific unincorporated areas, including the Bret Harte Neighborhood, Robertson Road Neighborhood, and the Beard Industrial Area. New development in these delineated unincorporated areas is considered infill and does not require further Commission review for the provision of extended sewer and/or water services. The Commission may consider similar approvals for area-wide service extensions on a case-by-case basis when it determines each of the following exists:
1. There is substantial existing development in the area, consistent with adopted land use plans or entitlements.
  2. The area is currently located within the agency's sphere of influence.

3. The agency is capable of providing extended services to the area without negatively impacting existing users.
  4. The proposal meets one of the situations outlined in Section C of this Policy where extension of services is an appropriate alternative to annexation.
- G. In the case where a city or district has acquired the system of a private or mutual water company prior to January 1, 2001, those agencies shall be authorized to continue such service and provide additional connections within the certificated service area of the private or mutual water company, as defined by the Public Utilities Commission or other appropriate agency at the time of acquisition, without LAFCO review or approval as outlined in Government Code Section 56133. The continuation of service connections under this policy shall not be constrained by the sphere of influence of that local agency at that time. Proposals to extend service outside this previously defined certificated area would come under the provisions of Government Code Section 56133 for the review and approval by the Commission prior to the signing of a contract/agreement for the provision of the service.
- H. Exemptions: Consistent with Government Code Section 56133, this policy does not apply to:
1. Two or more public agencies where 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.
  2. The transfer of non-potable or non-treated water;
  3. The provision of surplus water to agricultural lands and facilities, including but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries. However, prior to extending surplus water service to any project that will support or induce development, the city or district shall first request and receive written approval from the commission in the affected county.
  4. An extended service that a city or district was providing on or before January 1, 2001.
  5. A local publicly owned electrical utility, as defined by Section 9604 of the Public Utilities Code, providing electrical services that do not involve the acquisition, construction, or installation of electrical distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundaries.
  6. A fire protection contract, as defined in Section 56134 and Policy 15a.

**POLICY 15a – FIRE PROTECTION CONTRACTS OR AGREEMENTS**

*(Adopted on January 24, 2018)*

Effective January 1, 2016, Government Code Section 56134 requires the Commission to review a fire protection contract or agreement that provides new or extended fire protection services outside an agency's jurisdictional boundaries and meets either of the following thresholds: (1) transfers service responsibility of more than 25 percent of an affected public agency's jurisdictional boundaries; or (2) changes the employment status of more than 25 percent of the employees of any affected public agency.

- A. A request by a public agency for Commission approval of new or extended services provided pursuant to a fire protection contract shall be made by resolution of application and include all information regarding proposed services and financial information as required by Government Code Section 56134.
- B. The Commission will review proposals for consistency with the required findings of 56134(h)(2)(i) and (j), as well as the overall purposes of LAFCO that encourage the efficient provision of government services.
- C. Existing fire protection contracts, and their renewal, will not be subject to the requirements of Government Code Section 56134 unless a subsequent change to the contract either transfers service responsibility of more than 25 percent of an affected agency's jurisdictional boundary or changes employment status of more than 25 percent of the affected agency's employees. Additionally, mutual or automatic aid agreements are not subject to Government Code Section 56134.

**POLICY 16 - INDIVIDUAL NOTICE OF COMMISSION HEARINGS TO LANDOWNERS AND REGISTERED VOTERS**

In implementing the provisions of Government Code Section 56157, the Commission determines that LAFCO staff shall provide individual notice of Commission hearings to all landowners and registered voters within a proposal's boundaries. In addition, the distance requirements for providing notice to landowners and registered voters surrounding the exterior boundaries of the area proposed for change, as required by Section 56157, will be 300 feet.

For proposals that require the mailing of at least 1,000 notices, the individual notice requirement may be waived and a 1/8th page legal ad will be placed in a newspaper of general circulation and a courtesy notice shall be placed in the local newspaper for the area, if applicable.

The proponent(s) of the action shall reimburse the Commission's costs associated with providing the notice described by this policy. (Government Code Section 56150 et. seq.)

**POLICY 17 - ISLAND ANNEXATIONS**

The Commission will consider this policy as it relates to provisions intended to streamline island annexations as set forth in in Government Code Section 56375.3.

- A. The Commission will not permit a city to reduce the size of an existing island through normal change of organization or reorganization proceedings for the purpose of allowing the remaining island to be processed pursuant to [the streamlined island annexation provisions outlined in](#) Government Code Section 56375.3.

**Commented [SL3]:**  
Minor improvements made to this section to be consistent with Government Code Section 56375.3

~~B. For change of organization or reorganization proposals initiated on or after January 1, 2000, and before January 1, 2014, the Commission shall approve, after notice and hearing, the annexation to a city and waive protest proceedings entirely, if all of the following are true:~~

- ~~1. The change of organization or reorganization is proposed by resolution adopted by the affected city; and~~
- ~~2. The Commission finds that the territory contained in the change of organization or reorganization proposal meets all the requirements set forth in Government Code Section 56375.3(b).~~

C.B. ~~For change of organization or reorganization proposals initiated after January 1, 2014, the Commission shall approve, after notice and hearing, the change of organization or reorganization to a city, subject to subdivision (a) of Section 57080, and waive protest proceedings entirely. if all of the following are true:~~

1. The change of organization or reorganization is proposed by resolution adopted by the affected city; ~~and.~~
2. The Commission finds that the territory contained in the change of organization or reorganization proposal meets all of the requirements set forth in Government Code Section 56375.3(b) for streamlined island annexations.

D.C. The requirements set forth in Government Code Section 56375.3 (b) are summarized as follows:

1. The territory does not exceed 150 acres in area, and that area constitutes the entire island; ~~and.~~
2. The territory constitutes an entire unincorporated island located within the limits of a city, or constitutes a reorganization containing a number of individual unincorporated islands; ~~and.~~
3. The territory is surrounded in either of the following ways:
  - a. Surrounded, or substantially surrounded, by the city to which annexation is proposed or by the city and a county boundary or the Pacific Ocean.
  - b. Surrounded by the city to which annexation is proposed and adjacent cities.

C. This subdivision shall not be construed to apply to any unincorporated island within a city that is a gated community where services are currently provided by a community services district.

4. The territory is not prime agricultural land, as defined by the Section 56064, and will benefit or is receiving benefits from the annexing city.

E.D. The Commission will define the term “substantially surrounded” on a case-by-case

**Commented [SL4]:**  
This sunset clause was removed from Government Code section 56375.3

basis, through review of land uses, infrastructure, and patterns of service delivery within the island area and surrounding lands. No specific percentage of boundary contiguity will be applied across the board for all proposals purporting to be “substantially surrounded”.

F.E. For island annexation proposals initiated by a city meeting the requirements of Government Code Section 56375.3, the Commission shall require either the city pre-zone the territory to be annexed or present evidence satisfactory to the Commission that the existing development entitlements on the territory are vested on are already at build out and are consistent with the City’s general plan.

### **POLICY 18 - CONDUCT OF PROTEST HEARINGS**

The Commission determines that the responsibility for the conduct of protest hearings, including notice, solicitation of protest, and evaluation of protest levels, is delegated to the Executive Officer.

The Executive Officer shall prepare the final resolution of conducting authority proceedings that completes the action based upon the level of protest submitted and report the conclusion of these actions to the Commission at the next scheduled Commission meeting. *Note: Please refer to Appendix A – Procedural Provisions for Conducting Authority Hearings (Protest Proceedings.)*

### **POLICY 19 - STREETS AND CANALS**

The following shall be used in determining the appropriate territory to be included in the boundaries of a proposal:

#### **A. Annexation to Cities.**

1. Areas surrounded or substantially surrounded by a city may include all contiguous public rights of way that can reasonably be included without fragmenting governmental responsibility by alternating city and county jurisdiction over short sections of the same right of way.
2. Contiguous areas located substantially within a sphere of influence may provide for the continuation of established street annexation patterns when appropriate.
3. When a boundary street is coterminous with the sphere of influence boundary of a city, the entire right of way of the boundary street may be included.
4. When a street is a boundary line between two cities the centerline of the street may be used as the boundary or whatever agreement is reached by the affected cities.

#### **B. Annexations to Special Districts.**

1. Areas located within a sphere of influence shall include all contiguous public rights of ways that can reasonably be included.

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**STANISLAUS LOCAL AGENCY  
FORMATION COMMISSION**

**RESOLUTION**

**DATE:** April 22, 2020

**NO.** 2020-02

**SUBJECT:** Adoption of a Policies and Procedures Update

On the motion of Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, and approved by the following:

Ayes: Commissioners:  
Noes: Commissioners:  
Absent: Commissioners:  
Ineligible: Commissioners:

**THE FOLLOWING RESOLUTION WAS ADOPTED:**

**WHEREAS**, the Cortese-Knox-Hertzberg Local Government Reorganization Act (Government Code Section 56000 et seq.) and more specifically, Government Code section 56300(a) requires each LAFCO to establish written policies and procedures;

**WHEREAS**, the Commission desires to update its Policies and Procedures in response to recent legislative changes in order to remain consistent with State law and the overall goals of LAFCO;

**WHEREAS**, the Commission has conducted a noticed public hearing on April 22, 2020 to consider the Policy and Procedures update;

**WHEREAS**, the Commission has considered the written staff report and testimony and evidence presented at the public hearing held on April 22, 2020 regarding the update; and,

**WHEREAS**, adoption of the Policy and Procedures update amendment is considered a continuing administrative or maintenance activity with no potential for direct or indirect physical change to the environment and is therefore not a "project" for the purposes of the California Environmental Quality Act (CEQA), pursuant to Section 15378(b)(2).

**NOW, THEREFORE, BE IT RESOLVED** that this Commission:

1. Finds that the proposed Policy and Procedures update is consistent with State Law and the overall goals of LAFCO;
2. Finds that the proposed Policy and Procedures update is not a project for the purposes of the California Environmental Quality Act (CEQA) pursuant to Section 15378(b)(2); and,

3. Adopts the proposed Policy and Procedures update to be effective immediately.

**ATTEST:** \_\_\_\_\_  
Sara Lytle-Pinhey  
Executive Officer

Attachment: Policies and Procedures Update