

**EXECUTIVE OFFICER'S AGENDA REPORT
JUNE 23, 2010**

TO: LAFCO Commissioners

FROM: Marjorie Blom, Executive Officer *MB*

SUBJECT: Public Hearing - Consideration and Adoption of Additional and Revised LAFCO Policies and Procedures for Consistency with State Law

BACKGROUND

On December 5, 2001, the Commission adopted policies and procedures consistent with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH Act). At that time, it was noted that there may be additional amendments to the CKH Act from time to time, due to changes in State law and/or local commission policies or procedures.

DISCUSSION

Recently, there have been legislative changes to the LAFCO law (CKH Act), resulting in the following suggested changes to the Commission's policies and procedures:

1. Pursuant to Government Code Section 56668(g), the addition of a new factor the Commission must consider with regards to regional transportation plans: "(g) A regional transportation plan adopted pursuant to Section 65080, and consistency with city or county general and specific plans."
2. The following additional proposed revisions are also recommended:
 - a. Clarification to Rule 47 with regards to the Commission's established Schedule of Fees and Deposits and Commission Policy 12 – Waiver of Filing fees.
 - b. Revisions to Rule 49 which outlines the rules and regulations for travel related expenditures for Commissioners and staff.

ENVIRONMENTAL REVIEW

The proposed policy revisions are exempt under §15061(b)(3) of the California Environmental Quality Act (CEQA), as it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

RECOMMENDATION

Staff recommends that following the Public Hearing, the Commission adopt Resolution No. 2010-11, approving the proposed additional and revised Policies and Procedures, consistent with the recent legislative changes to the CKH Act.

Attachments: Exhibit 1 - Additional Factor relating to Government Code Section 56668(g)
Exhibit 2 - Proposed Revisions to Rule 47 and Policy 12 Relating to LAFCO Fees
Exhibit 3 - Proposed Revisions to Rule 49 - Travel Related Expenditures
LAFCO Resolution No. 2010-11

cc: Dean Wright, LAFCO Counsel

**Exhibit 1 -
Additional Factor relating to Government Code Section 56668(g)**

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; 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; 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) **A regional transportation plan adopted pursuant to Section 65080, and**
cConsistency with city or county general and specific plans.
- (h) The sphere of any local agency which may be applicable to the proposal being reviewed.
- (i) The comments of any affected local agency or other public agency.
- (j) The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for those services following the proposed boundary change.
- (k) Timely availability of water supplies adequate for projected needs as specified in Section 65352.5.

**Exhibit 2 –
Proposed Revisions to Rule 47 and Policy 12 Relating to LAFCO Fees**

- E. Pursuant to Government Code Section 57009, expenditures for political purposes related to proceedings for a change of organization or reorganization that will be conducted pursuant to this part, and contributions in support of, or in opposition to those proceedings, shall be disclosed and reported to the commission to the same extent and subject to same requirements as the Political Reform Act, Title 9 (commencing with Section 81000) as provided for local initiative measures. (Amended January 23, 2008. Refer to Appendix C for Stanislaus LAFCO's reporting and disclosure requirements pursuant to AB 745.)

FISCAL MATTERS

RULE 46: BUDGET PREPARATION. The Commission shall annually adopt a "preliminary" budget and a "final" budget at noticed public hearings in accordance with the requirements outlined in Government Code Section 56381.

RULE 47: REVIEW OF FEE SCHEDULES. The Commission shall establish fees **and a schedule of service charges** to offset the costs of processing applications and providing monthly agenda materials to parties requesting them. The Commission shall review and adjust, if necessary, its fee schedule concurrently with its preparation of the budget. (Government Code Section 56383)

- A. The fees shall not exceed the estimated reasonable cost of providing the service for which the fee is charged and shall be imposed pursuant to Section 66016. The service charges shall not exceed the cost of providing service for which the service charge is charged and shall be imposed pursuant to Section 60016.**
- B. The Commission may require that an applicant deposit some or all of the required amount that will be owed with the Executive Officer before any further action is taken. The deposit shall be made within the time period specified by the Commission.**
- C. No application shall be deemed filed until the applicant deposits the required amount with the Executive Officer. The Executive Officer shall provide the applicant with an accounting of all costs charged against the deposited amount. If the costs are less than the deposited amount, the Executive Officer shall refund the balance to the applicant after the Executive Officer verifies the completion of all proceedings. If the costs exceed the deposited amount, the applicant shall pay the difference prior to the completion of all proceedings.**
- D. The Commission may reduce or waive a fee, service charge or deposit if it finds that the 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. (See also Commission Policy 12 – Waiver of Filing Fees.)**
- E. Any mandatory time limits for Commission action may be deferred until the applicant pays the required fee, service charge, or deposit.**

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) (Amended April 23, 2003)*

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 for a maximum of seventy (70) days.

POLICY 11 - REVIEW OF ENVIRONMENTAL APPEALS.

Where the published notice of the LAFCO agenda items includes notice of a hearing on any possible appeal from an environmental review determination, the LAFCO may hear the appeal on the same date it hears the agenda item, if:

- A. The appeal was timely filed;
- B. The time for filing an appeal has run;
- C. The appellant and/or applicant have received personal notice of the hearing;
- D. Any party who has requested in writing to be notified has received personal notice of the hearing; and,
- E. The appeal is heard in advance of the agenda item.

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.

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.**

**Exhibit 3 –
Proposed Revisions to Rule 49 - Travel Related Expenditures**

RULE 48: COMPENSATION FOR MEETING ATTENDANCE BY COMMISSIONERS.

The Commission may establish a rate of compensation for meetings attended. The Commission shall establish, review, and adjust if necessary, the rate of compensation concurrently with its preparation of the budget. (Government Code Section 56344)

RULE 49: RULES AND REGULATIONS FOR TRAVEL RELATED EXPENDITURES.

The purpose of this section is to provide guidance on the use and expenditure of LAFCO resources and to establish a written policy for reimbursement of necessary travel expenses by Commissioners and Staff.

A. GENERAL POLICIES

LAFCO employees and Commissioners compelled to travel in the performance of their duties and in the service of the Commission shall be reimbursed for their actual and necessary expenses, including transportation expense, lodging, and meals and other reasonable incidental costs.

LAFCO employees and Commissioners should not suffer any undue loss when required to travel on official LAFCO business, nor should said individuals gain any undue benefit from such travel.

All travel arrangements are coordinated through the Executive Officer and should be as economical as possible considering the travel purpose, traveler, and timeframe available to accomplish the travel mission, available transportation and facilities, and time away from other duties.

Requests for travel authorization and reimbursement are processed using the LAFCO Travel Authorization Form to facilitate reimbursement. Receipts are required for reimbursement of lodging costs, registration fees, public transportation and other expenses as may be necessary to facilitate reimbursement.

B. TRAVEL AUTHORIZATION AND APPROVAL

Authorization and approval by the Executive Officer or the Commission is required for all travel. LAFCO employees and Commissioners must obtain authorization for travel before incurring costs and before commencing travel (e.g. completion of a "Travel Authorization" form).

C. REIMBURSEMENT PROCEDURES

1. Mileage: The Stanislaus County Mileage Chart shall be used to obtain appropriate mileage. When it is not reasonably possible to capture accurate costs for mileage using the County Mileage Chart, claimant's odometer reading may be used, rounded to the nearest mile, or through the submittal of written documentation from online sources such as Expedia Maps, or Map Quest.

2. Travel: Travel to meetings, conferences, workshops, training seminars and other Commission or CALAFCO related business shall be coordinated with the Clerk to the Commission or the Executive Officer.

A Travel Authorization form must be completed detailing anticipated expenses. The form shall be signed by the Chair of the Commission or the Executive Officer. The Executive Officer shall sign employees' travel authorization forms.

- 3. Meals: The cost of meals will be reimbursed consistent with the current Stanislaus County Travel Policy.**
- 4. Lodging: Lodging arrangements should be made, whenever possible and practicable, at hotels/motels which offer a government discount or conference rate and also offer a Transient Occupancy Tax waiver, if available. When staying at such a facility, the name of the Staff/Commissioner and the Agency must appear on the receipt of the hotel/motel bill. Single rates will be paid, except when the room is occupied by more than one LAFCO employee or Commissioner. This policy shall not be construed to require shared sleeping accommodations while traveling on LAFCO business.**

RULE 50: RESOLUTIONS OF APPRECIATION. The Commission authorizes expenditure for mounting and framing of resolutions (**or plaques**) of appreciation for retiring LAFCO Commissioners and LAFCO staff personnel who have rendered outstanding service.

In respect to retiring Commissioners, the public purpose being served by such expenditure is that through publicly adopted resolutions of appreciation, appropriately framed, other members of the public will also be encouraged to render public service by becoming members of various public agencies and commissions.

The public purpose of the framed resolutions of appreciation for the LAFCO staff is to give recognition for outstanding services rendered, with the purpose of maintaining high moral while at the same time providing further incentive or efficiency and productivity.

COMMISSION ACTIONS

RULE 51: REQUEST FOR REVISION OF PROPOSAL BOUNDARIES. Any request by an agency, landowner, or interested party to revise the boundaries of any proposal to add adjacent territory must be received by the Executive Officer at least 30 days prior to the hearing and shall clearly justify and give reasons for the requested revision and include a map of the revision. Affected agencies and landowners shall be mailed a notice by LAFCO of the revision at least twenty-one (21) days prior to the hearing, unless their consent is provided.

Requests or revisions shall be reviewed in the same manner as the original proposal by the Executive Officer and the Commission and may be continued by the Commission if information or adequate notice has not been provided.

RULE 52: RESOLUTIONS. A resolution shall be prepared for each proposal indicating the action and determination of the Commission as required by law. The resolution shall be signed and certified by the Executive Officer.

LAFCO Resolution No. 2010-11

STANISLAUS COUNTY LOCAL AGENCY
FORMATION COMMISSION

DRAFT

RESOLUTION

DATE: June 23, 2010

NO. 2010-11

SUBJECT: Adoption of Additional and Revised LAFCO Policies and Procedures for
Consistency with State Law

On the motion of Commissioner _____, seconded by Commissioner _____, and approved by the following vote:

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

THE FOLLOWING RESOLUTION WAS ADOPTED:

WHEREAS, on December 5, 2001, the Commission adopted Policies and Procedures in accordance with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH Act);

WHEREAS, the Commission desires to amend its current Policies and Procedures to address recent legislative changes as put forth in State law;

WHEREAS, recent legislative changes under the CKH Act have affected Government Code Section 56668(g), which adds a new factor that the Commission must consider when reviewing annexation proposals with regards to consistency with regional transportation plans;

WHEREAS, the Commission also desires to make revisions to clarify Rule 47 and Policy 12 (with regards to fee waivers) and Rule 49 (travel related expenditures);

WHEREAS, the adoption of the revised Policies and Procedures is exempt from the California Environmental Quality Act (CEQA); and

WHEREAS, the Commission has considered the written report submitted by the Executive Officer and testimony and evidence presented at the meeting held on June 23, 2010.

NOW, THEREFORE, BE IT RESOLVED that the Commission:

1. Adopts the proposed revisions to be included in the Stanislaus LAFCO Policies and Procedures Manual, as put forth in the June 23, 2010 Executive Officer's Report on this matter.

ATTEST: _____
Marjorie Blom
Executive Officer