

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

1. GENERAL¹

1.1 MISSION

The Madera Local Agency Formation Commission coordinates local and timely changes in local governmental boundaries (§56001); makes special studies to obtain and furnish information which contribute to the logical and reasonable development of local agencies; and prepares spheres of influence determinations for each local agency within the County (§56425). The Commission promotes efficient extension of services while encouraging protection of agricultural and open space lands (§56001). Further efforts include discouraging urban sprawl and encouraging orderly formation and development of local agencies based upon local conditions and circumstances (§56301).

Local Agency Formation Commissions are independent commissions that are not a part of county government. Each Commissioner is independent when weighing and reviewing information and when making determinations (Attorney General Opinion 98.802). The mission of the Madera Local Agency Formation Commission is to act by implementing the Cortese-Knox-Hertzberg Act (§56000) and through the adoption of policies, guidelines and procedures.

This document contains the policies, guidelines and procedures needed to implement LAFCo's mission. The provisions of these policies, guidelines and procedures are not intended to preempt state law. In the event of a conflict between these policies and guidelines, and the provisions set forth in the Cortese-Knox-

¹Note: All code notations in the Policies and Guidelines refer to California Government Code unless otherwise noted.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

Hertzberg Local Government Reorganization Act of 2000, the provisions of the Act shall prevail.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

1.2 THE COMMISSION

- 1.21. Madera LAFCo shall be composed of five members (§56325). State law provides for the addition of two members from independent special districts if a majority of independent special districts request representation.
- 1.22. The term of each member shall be four years. Commissioners serve until the appointment of a successor or until removed by the appointing body (§56334).
- 1.23. Two members from the County Board of Supervisors are selected by that Board (§56325). Two City Council Members are designated by the City Selection Committee (§56325). A Public Member-at-Large is appointed by the other four commissioners (§56325). One alternate is also selected in each category (§56325).
- 1.23.5 After or in anticipation of the regular or alternate Public Member-at-Large position becoming vacant, the Executive Officer shall set on the next available LAFCo meeting agenda an item for the selection of a Public Member-at-Large and/or Alternate Public Member-at-Large, the Commission will then nominate and select a member/s of their choosing.
- 1.24. Alternate Commissioners are encouraged to take an active role in Madera LAFCo business including discussions on project proposals, California Association of Local Agency Formation Commission's (CALAFCo) legislative activities and training workshops, interagency coordination and communication, and participation in policy development and other working groups.
- 1.25. Alternate members may vote in place of any regular members, in their category, who are absent or who disqualifies themselves from participating in an action (§56325). However, Alternate Commissioners do not participate in

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

closed sessions unless acting for an absent member(Attorney General Opinion 98-1011; approved March 4, 1999).

- 1.26. Where a Commissioner is also a city, county, or independent special district officer, the Commissioner's membership is considered vacant if the Commissioner ceases to hold the city, county or independent special district office (§56337).
- 1.27. Commission members and alternates shall receive a stipend of \$100.00 (pending Board of Supervisor's approval) for each meeting attended and shall be reimbursed for other reasonable and necessary expenses incurred in performing the duties of their office (§55334).
- 1.28. It is the policy of Madera LAFCo to be a member of CALAFCo.

1.3 CONFLICT OF INTEREST

- 1.31. The Political Reform Act, Government Code §81000 et. seq. requires each state and local government agency to adopt and promulgate a Conflict of Interest Code. The Fair Political Practices Commission has adopted Title 2 of the California Code of Regulations §18730, which contains the terms of a standard Conflict of Interest Code. This standard Code can be incorporated by reference and may be amended by the Fair Political Practices Commission after public notice and hearings to conform to amendments in the Political Reform Act. Therefore, terms of Title 2 of the California Code of Regulations §18730 and any amendments to it duly adopted by the Fair Political Practices Commission, are incorporated by reference herein.
- 1.32. The following designated contract employees of the Madera Local Agency Formation Commission shall file Statements of Economic Interests: the Executive Officer and Legal Counsel.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

- 1.33. Members of the Local Agency Formation Commission shall file Statements of Economic Interests as required by Government Code §87200 et. seq. or this Conflict of Interest code.
- 1.34. Statements of Economic Interests shall provide disclosure in all categories required by the Government Code.
- 1.35. Individuals or firms contracting with the Madera Local Agency Formation Commission for the provision of goods and services are not required to file Statements of Economic Interests unless the Executive Officer of LAFCo determines in writing that the contractee has been hired to perform a range of duties that falls within the scope of Title 2 of the California Code of Regulations §18702.2 and are incorporated by reference herein. Any such written determination shall include a description of the contractee's duties and, based upon that description, a statement of the extent of economic disclosure requirements. Such determination shall be a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.
- 1.36. Statements of Economic Interests shall be filed with the Madera County Clerk.

1.4 DISCLOSURE OF CONTRIBUTION

- 1.41. At a duly noticed public hearing on April 10, 2001, the Commission discussed the adoption of policies and procedures regarding the disclosure of expenditures made in support or opposition to a change of organization. The Commission determined that existing law (the Political Reform Act, Government Code §81000 et. seq.) was sufficient for Madera LAFCo. This section shall be reserved in the event the Commission decides at some later date to adopt written policies regarding this matter.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

1.5 LOBBYING DISCLOSURE

1.51. At a duly noticed public hearing on April 10, 2001, the Commission discussed the adoption of policies and procedures regarding the disclosure of lobbying activity for persons who attempt to influence pending decisions to be made by Commission members, staff or consultants. The Commission determined that existing law (the Political Reform Act, Government Code §81000 et. seq.) was sufficient for Madera LAFCo. This section shall be reserved in the event the Commission decides at some later date to adopt written policies regarding this matter.

1.6 LAFCO MEETINGS

1.61. Meetings are conducted monthly on the second Tuesday and are usually held in the Board of Supervisors Chambers in the Madera County Government Center located at 209 West Yosemite Avenue, Madera, California at 7:00 p.m.

1.62. Periodically, the Commission may change the meeting schedule, add or cancel hearings as appropriate.

1.63. Public notice of regular and special meetings will be provided in accordance with the provisions of the Cortese-Knox-Hertzberg Act, the Brown Act, and the California Environmental Quality Act where appropriate.

1.64. The Executive Officer may provide public notice, above that required by law, when appropriate.

1.65. Meeting agendas will be provided on the Madera County Web Site and to all parties on LAFCo's established agenda mailing list, including appropriate media, project proponents, and interested parties requesting notice for a specific hearing.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

- 1.66. Robert's Rules of Order is designated as the general guide for conducting meetings and will be used to resolve points of order, except where they are inconsistent with these guidelines. See Section 7.1, Rules specific to the conduct of meetings by LAFCo.
- 1.67. A majority of the members of the Commission constitute a quorum for the transaction of business. No act of the Commission shall be valid or binding unless approved by a majority of the Commissioners. A majority vote of the quorum shall not be sufficient. In the absence of a quorum, the members present shall adjourn the hearing to a stated time and place (Robert's Rules of Order).
- 1.68. The Chair, when present, shall preside at all meetings of the Commission and shall conduct the business of the Commission in the manner prescribed by these rules. The Chair shall preserve order and decorum and shall decide all questions of order subject to the action of a majority of the Commission (Robert's Rules of Order, Art x.50).
- 1.69. In the absence of the Chair or if the Chair is unable to participate in the proceedings, the Chair Pro-Tem shall act as Chair, with all the powers and duties of the Chair. In the absence of the Chair and if the Chair Pro-Tem is unable to participate in the proceedings, the members of the Commission present shall, by an order entered in the minutes, select one of their members to act as Chair Pro-Tem with all the powers and duties of the Chair (Robert's Rules of Order).
- 1.610 The Chair (§56334) and Chair Pro-Tem shall be elected by a majority vote of the Commission. Elections shall be held annually at the first regular Commission meeting of the calendar year.
- 1.611 The offices of Chair and Chair Pro-Tem are one year terms. No Commission member shall serve more than two consecutive one year terms in the same office.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

1.7 LAFCO FEES

1.71. Application of Fees

- a. The Commission shall annually review fees and adopt a fee schedule for the purpose of recovering the costs of all proceedings taken pursuant to the Cortese-Knox-Hertzberg Act (§56383(a), §66016). See Appendix 7.2, Fee Schedule.
- b. The schedule of fees shall not exceed the estimated reasonable cost of providing the service for which the fee is charged and shall be imposed pursuant to §56383(b).
- c. No petition shall be deemed filed until the fee has been deposited with LAFCo. (§56383(c)).

1.72. Appeal of Fees

- a. LAFCo fees may be appealed before the Commission.
- b. Appeals shall be submitted in writing with the application and contain specific justification for the request. The appeal will be considered at the next LAFCo hearing.
- c. Project processing will not begin until a fee determination is rendered by LAFCo.
- d. The Commission may not waive, defer or reduce fees unless it finds that the payment of such fee will result in undue and extra hardship to the applicant that is not caused by the applicant's own action, and it also finds it can be demonstrated that the project is necessary for the public health, safety and welfare.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

1.73. Refunds

- a. If an application is withdrawn, LAFCo will refund up to fifty percent of the submitted fee, or a sum equal to the original fee minus processing costs to date, whichever, in the opinion of the Executive Officer, ensures that LAFCo recovers its actual costs.
- b. No refunds will be provided after a public hearing has been scheduled and LAFCo's scheduling procedure has been concluded. (Scheduling procedure includes mailed notices, legal ads, other agency notification.)
- c. Projects which change substantially and require major revisions of previously completed work may be subject to the collection of additional fees as determined by the Executive Officer.

1.74. Legal Defense Fees

- a. The direct costs for legal defense of any LAFCo action are considered application processing cost and are the responsibility of the applicant.
- b. The Commission shall include within its application form, a condition which requires the applicant to defend, indemnify, and hold the Commission harmless, in the event that legal action is taken against LAFCo as a result of a project's approval.
- c. The Commission reserves the right to waive payment if its finds that payment of such fee will result in extraordinary hardship to the applicant, and where it can be demonstrated that the project is necessary and the Commission finds that payment would be detrimental to the public interest.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

- d. The Executive Officer shall promptly notify an 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.
- e. The applicant may provide their own counsel in the defense of the action taken, under the supervision of LAFCo Counsel, or the applicant may, with the concurrence of the LAFCo Counsel, elect to use the services of LAFCo Counsel in that defense. In either case, the Executive Officer may require a deposit of funds sufficient to cover estimated expenses of the litigation (§56383(c)).

1.8 LAFCO BUDGET

As stated in Section 1.1, under the law and LAFCo's Policies, Guidelines, and Procedures, LAFCo is an independent Commission that is not a part of County government. As an independent Commission, LAFCo sets its own budget and controls its expenditures. It is particularly important that LAFCo's autonomy be maintained in the budget process. Therefore, the following policies and guidelines will control the LAFCo budget process:

- 1.81. At a minimum the proposed and final budget shall be equal to the budget adopted during the previous fiscal year, unless the Commission finds that reduced staff or program costs will allow the Commission to fulfill its mission (§56381(a)).
- 1.82. After public hearings, consideration of comments, and adoption of final budget, the Auditor shall apportion net operating expenses of the Commission per Section 1.83 below.
- 1.83. County and cities shall each provide a one-half share of Commission's operational costs. If Independent Special Districts obtain representation, operational costs shall be divided three ways.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

- 1.84. The Auditor shall request payment from the County and each City (and independent special districts if applicable) no later than July 1st of each year.
- 1.85. The LAFCo annual budget request will identify the resources available for LAFCo's use under the law and those resources necessary for the purpose of carrying out the Commission's goals and policies.
- 1.86. The LAFCo Executive Officer shall serve as the budget administrator to prepare, present, and transmit to each participating public agency; the LAFCo Executive Officer shall also review, execute and maintain the LAFCo budget.
- 1.87. Fees charged by LAFCo are set at the maximum justifiable level to recover costs of processing applications; and fee rates are reviewed and revised annually (§56383).
- 1.88. In order to develop and maintain a reserve account for LAFCo's use, all unspent appropriations remaining at the end of a fiscal year shall be transferred to a contingency fund for LAFCo's use in the succeeding fiscal year. When the amount of the contingency fund exceeds 10% of the succeeding fiscal year budget, the surplus amount shall be returned to the County and each City or Independent Special District in proportion to their contributions. The amount of the contingency fund shall not affect the minimum alternative amount described in §56381(b).

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

1.9 EXECUTIVE OFFICER AND STAFF

1.91 Appointment of Executive Officer

The Commission shall appoint an Executive Officer, who shall be responsible for performing for the day-to-day business of the Commission. The duration of the Executive Officer's appointment shall be determined by the Commission.

1.92 Appointment of Staff

The Commission shall appoint and assign staff, or contract for outside professional consulting services, including legal counsel, to carry out and effect the functions of the Commission. The Commission may delegate to the Executive Officer some or all of the appointment, assignment and contracting authority described in this paragraph.

1.93 Delegation of Authority

The Commission may delegate to the Executive Officer such duties, responsibilities and authority as the Commission deems necessary and appropriate to facilitate accomplishment of the Commission's business. Such duties, responsibilities and authority may include, but are not limited to appointment of staff, purchasing, Professional Services, and Record Keeping as described in these Policies, Guidelines and Procedures. This delegation of authority may be rescinded at any time by the Commission, upon the giving of a written notice to the Executive Officer declaring the authorization to be terminated.

a. Purchasing

The Commission delegates to the Executive Officer, the authority to purchase for the LAFCo Commission and its staff such supplies,

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

materials, equipment, furnishings and contractual services as the Executive Officer may designate and upon the terms and conditions specified by the Executive Officer in writing. This authority shall also extend to the renting, for the LAFCo Commission and its staff, of offices, furnishings and equipment.

b. Staffing

The Commission delegates to the Executive Officer, the authority to appoint and assign staff, or contract for outside professional consulting services, including legal counsel, to carry out and effect the functions of the Commission.

c. Professional Services

The Commission delegates to the Executive Officer, the authority to contract with outside individuals or entities for professional services in such cases as the Executive Officer determines necessary and appropriate, and as in such cases as the Commission may direct. Expenditures for professional service contracts shall not exceed the sum of \$5,000.00, total compensation, per contract. Expenditures for professional service contracts which exceed the sum of \$5,000.00, per contract, total compensation, shall require the approval of the Commission prior to the Executive Officer entering into such contracts.

In the event that the Executive Officer enters into one or more professional service contracts, the Executive Officer shall thereafter notify the Commission of having done so, at the next regularly scheduled meeting of the Commission following the execution of the professional service contract(s).

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

d. Record Keeping

The Executive Officer shall maintain copies of all records of Madera LAFCo, including but not limited to correspondence, minutes, resolutions, contracts, memos, and receipts and expenditures, for such time as required by law. The Executive Officer shall, from time-to-time as the Commission may request, report to the Commission concerning the financial status of Madera LAFCo. All such records shall remain the property of Madera LAFCo.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

2. GENERAL POLICIES, REQUIREMENTS AND CRITERIA

This section includes general policies, requirements and criteria that apply to all LAFCo actions. There may be cases where the Commission must use its discretion in the application of these policies so that potential or real conflicts among policies are balanced and resolved based on project specifics and consistent with the requirements of the Cortese-Knox-Hertzberg Act.

2.1 APPLICATION PROCESS

2.11. All applications or petitions for consideration by the Commission are to be submitted on LAFCo forms (§56652). See Appendix 7.3, Instructions and Information, Project Information, Applications, Consent Form, Petitions and Environmental Information Form.

2.12. Applications shall be processed in an efficient and orderly manner that reduces hardship upon the applicant while ensuring compliance with the Cortese-Knox-Hertzberg Act. To that end, the applicant or applicant's representative shall be required to attend a pre-application submittal meeting with staff to receive direction and advice regarding the processing needs and requirements of the specific action to be considered.

2.13. Any application submitted to LAFCo is considered a preliminary submittal and will not be deemed filed until such time as all required information, fees and materials are received. Preliminary processing may occur during the preliminary submittal phase.

2.14. Applicants will be required to provide information adequate to permit LAFCo to fully consider all factors required by law including, but not limited to the following (§56668):

- a. Population; population density; land area and land use; per capita assessed valuation; topography; natural boundaries and drainage

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

basins; proximity to other populated areas; the likelihood of significant growth in the area and in adjacent and incorporated areas during the next ten years.

- b. 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.
- c. Effect of the proposed action and of alternate actions, on adjacent areas, on mutual economic or social interests, and on the local government structure of the County.
- d. Conformity of the proposal and its anticipated effects with the adopted commission policies on providing planned, orderly, efficient patterns of urban development, and the open space conservation policies and priorities set forth in Section 56377.
- e. 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 nonconformity 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. Consistency with city and county general and specific plans.
- h. The sphere of influence of any local agency which may be applicable to the proposal being reviewed.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

- i. The comments of any affected local 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 such services following the proposed boundary change.
 - k. Timely availability of water supplies adequate for projected needs including, but not limited to, the projected needs as specified in §65352.5.
 - l. The extent to which the proposal will assist the receiving entity in achieving its fair share of the regional housing needs as determined by the appropriate council of governments.
 - m. Any information or comments from the land owner or owners.
 - n. Any information relating to existing land use designations.
- 2.15. No application shall be deemed filed until resolutions providing for an agreement for redistribution of property taxes are received. Once property tax exchange negotiations have been initiated by transmittal of the schedules prepared by the County's Auditor/Controller, negotiation shall be concluded per Revenue and Taxation Code §99 and §99.01.
- 2.16. Additional application requirements including maps, fees, signed application forms, etc. must be completed within six months following the property tax redistribution agreement. If the application remains incomplete after six months the project will be closed and the proposal will be terminated.
- 2.17. LAFCo shall notify the appropriate agencies in order to obtain relevant application related information, and request review and comment on the proposal.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

- 2.18. LAFCo encourages consolidated applications where related changes of organizations are expected for adjacent territories. Petitioners are strongly encouraged to include that adjacent territory and combine applications where possible.
- a. If the applicant chooses to proceed with separate proposals, the applicant will provide a map which indicates the location, size and boundaries of adjacent applications.
 - b. LAFCo shall consider related applications at the same hearing where feasible, and may modify boundaries, including the addition of adjacent parcels, to encourage the orderly formation and development of local agencies based upon local conditions and circumstances.
- 2.19. If a project can be anticipated to require one or more additional changes of organization that are timely and not part of the submitted application, LAFCo shall require that a subsequent application(s) be filed as a condition of completing the original project.
- 2.20. Agencies shall comply fully with the Commission's requests for information necessary to prepare studies or process an application (§56378, §56386).

2.2 CEQA COMPLIANCE

- 2.21. LAFCo shall comply with the requirement of Public Resources Code Sections 20000 et seq, the California Environmental Quality Act (CEQA). No application shall be deemed filed for processing purposes until CEQA documentation has been completed which adequately addresses the requirements of CEQA and LAFCo's CEQA procedures.
- 2.22. LAFCo shall either adopt its own or adopt Madera County's policies and procedures for processing and administering CEQA (Public Resources Code §21082, 14 California Code of Regulations [CCR] §15022).

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

- 2.23. The Executive Officer shall serve as the Environmental Coordinator and have the authority to prepare or cause to be prepared the appropriate environmental documentation. The Executive Officer shall be responsible for making an environmental determination pursuant to the requirements of CEQA.
- 2.24. Applications for annexation to a City shall require that the city pre-zone the territory to be annexed. Such pre-zone shall be based on the general plan, and will not be deemed filed until the following is provided: (1) verification of an approved rezone from the annexing City and that no subsequent change may be made to the general plan for the annexed territory or zoning that is not in conformance to the pre-zoning designation for a period of two years after the completion of the annexation, unless the legislative body of the city makes a finding at a public hearing that a substantial change has occurred in circumstances that necessitate a departure from the pre-zoning in the application to the Commission (§56375); and (2) verification of a completed CEQA and/or NEPA process in which LAFCo assumed the Responsible Agency role (14 CCR §15022, §15042, §15050, §15051, §15096, §15381).

2.3 PLAN OF SERVICE

Per Section 1.1, Madera LAFCo's mission includes oversight of the orderly formation and development of local agencies including the provision of efficient and economical services. LAFCo requires that all service providers must document their ability to provide service to proposed annexations. LAFCo's Plan of Service information requirements are not intended to supersede or change existing documentation letters or policies currently used by any annexing agencies.

An evaluation of a local agency's service plan is necessary for the proper consideration of any change of organization or reorganization which expands or diminishes a service providers responsibilities. The intent of plans of service

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

evaluations is to ensure that the capacity, cost and adequacy of service within the district or City are not adversely impacted by the proposed LAFCo action.

2.31. General

- a. Applications shall include a plan to provide services (§56653) which includes information needed to render an informed decision on the proposed project.
- b. Plan of Service submittals are required to contain, but are not limited to, the following information: (1) an enumeration and description of the services to be extended to the affected territory; (2) the level and range of those services; (3) the estimated time frame for service delivery; (4) a statement of any capital improvements, or other conditions, which the local agency would impose or require within the affected territory if the requested action is approved; and (5) how these services will be financed (§56653).
- c. No application shall be deemed filed until the Plan of Service information is received and accepted as complete by the Executive Officer.

2.32. Plan of Service Information Requirements

The following information will enable the applicant and LAFCo to obtain information necessary to render a fair and informed decision. During the required pre-application conference, LAFCo staff will assist the applicant with determination of required project specific Plan of Service information.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

2.32.1 All applicants must provide the following:

- a. A capacity analysis which states: (1) number of service units available (units can be described as parcels, meters, equivalent dwelling units or other project specific units of measure as approved by the Executive Officer); (2) the number of service units currently allocated; (3) the total number of service units within agency boundaries, including assessment districts which may cross district boundaries, that are entitled to receive service; (4) the number of service units proposed to be added as a result of the annexation; and (5) the total number of service units entitled to receive services as a result of the proposed project. In the event that the applicant or annexing agency finds that there are not enough service units available to provide for number 5, the applicant shall provide a plan for obtaining the capacity necessary to provide service pursuant to 2.32.2 below.
- b. A description of the size, location and capacity of existing infrastructure.
- c. A statement from the annexing agency disclosing its disposition regarding responsibility to reserve capacity for unserved property within agency boundaries and current estimates of unserved property within its current boundaries.
- d. A list of the conditions that the applicant must meet in order to receive services from the annexing agency, such as annexation cost, facility plan report, fire flow requirements, on and off-site construction requirements, or easements, and a statement regarding who is responsible to fund required items.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

- e. A statement of intent to provide services by the annexing agency, including a description of the applicant's requirements to fund infrastructure so that areas within the district can be served, or will continue to be served, at the same or higher level of service, and proposed service areas will be accommodated at the same or a higher level of service. If the annexing agency cannot provide the latter guarantees, then the applicant or annexing agency shall provide a written justification for project approval despite anticipated negative impacts.

2.32.2 If service cannot be provided without expanding service capacity or constructing infrastructure (other than at parcel connections to service), then the following information shall be provided:

- a. A description of any required facility or infrastructure expansions or other necessary capital improvements;
- b. The likely schedule for completion of the expanded capacity project, the viability of the needed project, and the relation of the subject project to the overall project and project time line;
- c. A list of required administrative and legislated processes, such as CEQA review or State Water Resources Board allocation permits, including assessment of likelihood of approval of any permits and existence of pending or threatened legal or administrative challenges if known;
- d. The planned total additional capacity;
- e. The size and location of needed capital improvements;

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

- f. The proposed project cost, financing plan and financing mechanisms including a description of the persons or properties who will be expected to bear project costs; and
- g. Any proposed alternative projects if the preferred project cannot be completed (include information for each proposed alternative).

2.33. Service Assurances

2.33.1 No application to annex to a special district or city shall be deemed complete until the following information is provided in writing from the annexing special district or city:

- a. A statement that the annexing agency will be capable of providing adequate services when such services are projected to be needed within the area being annexed; and
- b. A statement that the furnishing of adequate services when such services are needed within the area being annexed will not result in a significant negative fiscal, service level or other impacts (cost and adequacy of service) to the detriment of those already enjoying such services.

Said statement need not consist of a representation that adequate services will be available immediately, or at a future date certain. Said statement may consist of a representation that the annexing agency, at the time of application, is in the process of planning to expand its service capacity, and that said planning has progressed sufficiently so that, by its future implementation of the plan, the annexing agency will be capable of providing adequate services when such services are projected to be needed within the area being annexed. The

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

Commission may request a full description of any such plan in the event it is not supplied in the written documentation submitted by the annexing agency. The Commission may also impose reasonable conditions related to progress toward completion of any such plan. LAFCo will evaluate said documentation to determine consistency with State requirements.

2.4 CONSISTENCY WITH LOCAL LAND USE PLANS AND POLICIES

The Commission shall view with disfavor projects that are inconsistent with the adopted City or County General or Specific Plans for the project area unless the following conditions are met:

- a. The site is located in an existing developed area where it can be clearly found that public health, safety, and welfare interests would best be served, or health and safety hazards could be mitigated, by the requested change or organization.
- b. The site is located in an existing developed area where district facilities are present and sufficient for service and where the Commission determines that the annexation does not represent a growth inducing factor for the area.
- c. The site is located in an existing developed area and disapproval would cause the loss of service to existing service users.

2.5. JURISDICTION

The Commission shall not impose any conditions that would:

- a. Directly regulate land use (§56375);

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

- b. Cause LAFCo to assume control over all or part of the operation of, or set policy for, any agency;
- c. Set standards or frequency of maintenance of any existing street or road, or cause any agency to improve public facilities not owned by the agency (§56376.5);
- d. Require service provision to areas outside of an agency's sphere of influence unless that condition mitigates effects that are a direct result of the annexation (§56376); or
- e. Regulate property development or subdivision requirements (§56375).

2.6. SPECIAL STUDIES

Among the purposes of a commission are the discouragement of urban sprawl and the encouragement of the orderly formation and development of local agencies based upon local conditions and circumstances. One of the objectives 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 so as to advantageously provide for the present and future needs of the county and its communities (§56301).

- 2.61. The Commission may initiate and make studies of existing governmental agencies (§56378).
- 2.62. Special studies may include, but shall not be limited to, inventorying those agencies and determining their maximum service capabilities. In conducting those studies, the Commission may ask for land use information, studies, plans of cities, counties, districts, including school districts, community college districts, regional agencies, and state agencies and departments (§56378).

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

- 2.63. To assist with the completion of studies, local and state agencies shall comply with LAFCo requests for information (§56378).
- 2.64. The Commission may apply for or accept grants or funding when offered to cover the reasonable costs of any study (§56378).

2.7 RECONSIDERATION PROCESS

- 2.71 The Commission may consider a refund of the reconsideration fee, or a portion thereof, at the request of the applicant. In the event that the Commission finds that its prior action was improper, the Commission may direct that all or part of the reconsideration fee be refunded to the applicant.
- 2.72. An application for reconsideration will only be accepted if the applicant has participated in the hearings resulting in the decision sought to be reconsidered. A person shall be deemed to have participated if he/she was either a party to the petition, attended the hearing, or offered oral or written comment on the proposal.
- 2.73. Reconsideration requests shall be filed within 30 days of a resolution making determinations or prior to the protest hearing, whichever is earlier.
- 2.74. Reconsideration requests shall specifically describe the basis for the request.
- 2.75. The reconsideration request shall be heard at the next regularly scheduled LAFCo meeting for which notice can be lawfully given at which time the Commission shall consider the request and receive oral and written testimony. The Commission shall act upon the item no later than seventy days after the first noticed public hearing.
- 2.76. Reconsideration is a two-step process. The Commission will first consider the request and may vote to reconsider the matter if any of the following findings can be made based on substantial evidence in the record.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

- a. Compelling new evidence exists, including significant and previously unavailable evidence that might alter the LAFCo's decision;
- b. Conditions have substantially changed, such as the repeal of an applicable law that might alter LAFCo's decision; or
- c. LAFCo's procedures were not substantially followed in the previous hearing(s).

2.77. The Commission may approve, deny, amend, modify or continue the matter. If the reconsideration request is granted, the Commission shall adopt a resolution which supersedes the previous Resolution.

2.78. Any Commissioner or alternate seated at a given meeting can vote on reconsideration of an action taken at a prior meeting regardless of their participation at a prior meeting as long as they review meeting reports, tapes and minutes prior to the meeting at which they vote.

2.79. The Commission's determination is final. No person shall make any further request for the same change or substantially similar change as determined by the Commission.

2.8. PREFERRED SERVICE PROVIDERS

The legislature has found that a single governmental 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). The Cortese-Knox-Hertzberg Act requires that LAFCo's consider the costs, adequacy and efficiency of service provisions.

2.81. LAFCo shall consider, and approve, where appropriate and feasible, the provision of new or consolidated services in the following order of preference.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

- a. Annexation to an existing city.
 - b. Annexation to an existing multiple purpose special district.
 - c. Annexation to an existing single purpose district
 - d. Consolidation of existing districts.
 - e. Annexation to a subsidiary district or County Service Area of which the Board of Supervisors is the governing body.
 - f. Incorporation of a new city.
 - g. Formation of a new multiple purpose district.
 - h. Formation of a new county service area.
 - i. Formation of a new single purpose district.
- 2.82. The Commission may disapprove requests for special/single purpose districts when a County Service Area can provide needed services.
- 2.83. Petitions forming special districts for multipurpose services will be given consideration for forming community services districts.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

2.9 BOUNDARY LINES

- 2.91. Every determination made by the Commission shall be consistent with the Spheres of Influence of the local agencies affected by that determination (§56375.5).
- 2.92. LAFCo shall modify, condition or disapprove proposals creating boundaries that are not definite and certain or do not conform to lines of assessment or ownership.
- 2.93. Lands to be annexed which are within an adopted Sphere of Influence shall be physically contiguous to the present district boundaries except under one of the following conditions (§56119):
- a. Existing developed areas where it can be clearly found that interests of public health, safety, and welfare would best be served by the addition of the service.
 - b. Existing developed areas which represent clear or present health or safety hazards that could be mitigated by the requested change of organization.
 - c. Existing developed area where district facilities are present and sufficient for service and where the Commission determines that the annexation does not represent a growth inducing factor for the area.
- 2.94. Islands, peninsulas, flags, “pin point contiguity,” and other irregular boundary lines are inconsistent with the formation of orderly and logical boundaries and shall be discouraged.
- 2.95. Natural boundary lines, which may be irregular, may be appropriate boundaries for LAFCo action and will not be discouraged.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

- 2.96. The resulting boundary configuration shall provide services in the most efficient manner possible.
- 2.97. The Commission may order the inclusion of additional territory to any proposal to correct an otherwise unacceptable boundary and to accomplish its goal of creating orderly boundaries.
- 2.98. The Commission may order a subsequent proposal to correct an otherwise unacceptable boundary or to address a bypassed area to accomplish its goal of creating orderly boundaries.

2.10. AGRICULTURE

- 2.10.1. LAFCo's decisions will reflect its legislated responsibility to work to maximize the retention of prime agricultural land while facilitating logical and orderly expansion of an urban area.
- 2.10.2. Agricultural land shall be determined to be prime based on soil characteristics or on productivity (§56064).
- 2.10.3. Development or use of land for other than open space uses shall be guided away from existing prime agricultural lands in open space use toward areas containing non prime agricultural lands unless that action undermines adopted County or City land use plans (§56377).
- 2.10.4. Development of existing vacant or prime agricultural lands for urban uses within the jurisdiction or sphere of influence of a local agency shall be encouraged before any proposal is approved which would allow for or lead to the development of prime agricultural or open space lands outside the jurisdiction or sphere of influence of any local agency (§56377).

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

- 2.10.5. Land specifically identified as prime agricultural, generally should not be approved for annexation to any city or special district for the extension of services to or through such areas if the landowner requests exclusion.

- 2.10.6. Development of existing vacant lots for urban uses should be encouraged before any proposal is approved which would allow for or lead to the development of existing prime agricultural lands for nonagricultural uses. Spheres of Influence should reflect consideration for existing and/or potential prime agricultural uses.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

3. SPHERE OF INFLUENCE

3.1 GENERAL

Government Code, beginning with §56425, requires the Local Agency Formation Commission to establish and maintain spheres of influence for all local agencies within its jurisdiction. A sphere of influence (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). Every determination made by a commission shall be consistent with the spheres of the local agencies affected by that determination (§56375.5). A sphere of influence is primarily a planning tool that will:

- Serve as a master plan for the future organization of local government within the County by providing long range guidelines for the efficient provision of services to the public;
- Discourage duplication of services by two or more local governmental agencies;
- Guide the Commission when considering individual proposals for changes of organization; and
- Identify the need for specific reorganization studies, and provide the basis for recommendations to particular agencies for government reorganizations.

3.2. PERIODIC REVIEW AND MAINTENANCE

The adequacy of each adopted SOI will be reviewed every 5 years following the initial sphere determination. This preliminary evaluation by staff who will recommend that the Executive Officer either: (1) proceed with a sphere update re-study or; (2) affirm the existing sphere.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

Each subject agency will be notified of the pending review of its SOI and will be requested to participate actively in any restudy efforts deemed necessary by the Commission. Each agency will complete a SOI questionnaire relating to its services and plans. Failure to respond will be regarded as concurrence with the Executive Officer's recommendation.

Changes in land use, planning policy, demographics, demand for public services, or service capabilities may justify the need to restudy and amend spheres of influence. The commission is responsible for the cost of LAFCo initiated review and revision of spheres.

LAFCo will, at any time, receive requests for amendments to spheres. If an agency, the County, or other party requests a review, study and/or amendment to a sphere, LAFCo will undertake the review as required by statute. Fees to cover the actual costs associated with a sphere review and amendment may be charged to the party requesting the review in accordance with the adopted fee schedule.

3.3 LIMITED SERVICE SPHERE OF INFLUENCE

Territory proposed for inclusion within the SOI of a multi-service provider agency which is also contained within the boundary of another limited purpose district (providing some but not all of the services which may be needed), may be included within the SOI of the multi-service agency and designated as a limited service sphere of influence area. Territory designated as limited service may be considered for annexation to the multi-service agency, without concurrent detachment from the limited purpose district, when the following determinations are made by the Commission:

- No feasible or logical alternative arrangement exists for the provision of service in the territory proposed for inclusion within the SOI;
- The existing multi-service agency is the most orderly and logical provider of some of the services which will be needed in the future;

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

- Existing services provided by the limited purpose district are found to be adequate, cost effective and efficient; and
- Inclusion of the territory in the SOI is in the best interests of local government organization and structure in the area.

3.4 CRITERIA FOR REVIEW OF SPHERE OF INFLUENCE AMENDMENTS (\$56425)

In determining the sphere of influence for each local agency the commission shall prepare a written statement of determinations with respect to each of the following:

- 3.41. The present and planned land uses in the area, including agricultural and open-space lands.
- 3.42. The present and probable need for public facilities and services in the area.
- 3.43. The present capacity of public facilities and adequacy of public services which the agency provides or is authorized to provide.
- 3.44. The existence of any social or economic communities of interest in the area if the Commission determines that they are relevant to the agency.

Before making these determinations, the Commission will review the following:

- The service capacity, level 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, land use plans and policies; consistency with county and city general plans; projected growth in the affected area, and potential effects on agricultural and open space lands;

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

- A description of the services that will be provided to any areas which may be added to the sphere, the timing and method for funding expansion of facilities or services; and
- An analysis of the effects a proposed sphere of influence will have on other agencies and their service capabilities.

3.5 OTHER RELATED POLICIES

- 3.51. When more than one agency can serve an area, LAFCo shall consider each agency's service capacity, financial capabilities, costs of service, social and economic interdependencies, topographic factors, LAFCo policies and input from the affected communities and agencies.
- 3.52. LAFCo will make every attempt to bring about amicable Spheres of Influence but ultimately, if a conflict should arise, LAFCo is the final determinant of that Sphere of Influence.
- 3.53. Inclusion within an agency's sphere of influence does not assure annexation to that agency.
- 3.54. In order to encourage orderly growth of urban areas, the Commission promotes infill development of incorporated vacant lands located adjacent to already developed areas.
- 3.55. Developed lands which benefit from municipal services and are contiguous to a city boundary should be annexed to the city that provides service.
- 3.56. Spheres of influence for cities and districts will promote the long term preservation and protection of the County's agricultural and open space resources.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

4. CHANGES OF ORGANIZATION

4.1. GENERAL

This section includes general policies, requirements and criteria that apply to all changes of organization. There may be cases where the Commission must use its discretion in the application of these policies so that potential or real conflicts among policies are balanced and resolved based on project specifics and consistent with the requirements of the Cortese-Knox-Hertzberg Act.

- 4.11. An annexation shall not be approved if it represents an attempt to annex only revenue-producing property.
- 4.12. Where another agency is currently providing service or objects to the annexation, LAFCo will compare the proposed plan of service with alternative service plans to determine whether the proposal is the best alternative for service provision.
- 4.13. It is policy of the Commission to approve changes of organization that encourage 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).
- 4.14. The proposed change of organization shall consider the adopted plans of the area proposed for annexation.
- 4.17. LAFCo will only approve changes of organization that are consistent with policies and criteria contained in Chapters 2 and 3 of this document as interpreted by the Commission.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

- 4.18. If LAFCo determines that the proposed service provider does not have the ability to provide service to the project, the Commission may approve the proposal if it adopts a condition requiring that the territory to be served will be annexed only after the service provider, provides written documentation assuring that the improvement project providing necessary service capacity, will be completed. LAFCo shall not issue or record a Certificate of Completion for any project prior to the receipt and verification of such documentation.
- 4.19. Prior to annexation to a city or special district, the petitioners shall demonstrate:
- That the need for governmental services exists;
 - That 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.
- 4.20. The proposed annexation shall be a logical and reasonable expansion to the annexing district.

4.2. ANNEXATION TO A SPECIAL DISTRICT

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.

- 4.21. 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.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

- 4.22. The annexing agency must demonstrate that no parcel located within district boundaries will be deprived of its right to receive services if the annexation is approved.
- 4.23. 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. 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.

4.3. ANNEXATION TO A CITY

Planned urban development contributes to the orderly growth of urban areas. Therefore, promotion of planned development is a primary goal of the Local Agency Formation Commission.

- 4.31. The fundamental policy of the Commission in considering the development status of land, located in or adjacent to an established city sphere of influence boundary and contiguous to a city boundary, shall be that such 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.
- 4.32. Developed lands which benefit from municipal services and are contiguous to a city boundary, should be annexed to that city providing such services.
- 4.33. Urban development and utility expansion plans should be planned and programmed by cities, special districts, and the County in cooperation with the Local Agency Formation Commission, which shall consider all appropriate general and specific plans and elements thereof and their effects (§56378).

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

- 4.34. Non-contiguous land may be annexed to a city if located in the same county as that in which the city is situated, is owned by the city, is being used for municipal purposes at the time Commission proceedings are initiated, and does not exceed 300 acres in area (§56742).
- 4.35. Petitions shall demonstrate the need for municipal services and the city to which the territory is being annexed shall be capable of meeting these municipal needs (§56700).
- 4.36. A city shall pre-zone undeveloped property to be annexed before the Commission takes action on the annexation (14CCR, §15051, §56375).

In addition, it shall be the policy of Madera LAFCo that should any city in Madera County pre-zone a piece of property for the purpose of annexation to said city, then the city shall include in its ordinance a condition regarding the pre-zoning with the following stipulation:

“The City agrees that no subsequent change may be made to the general plan for the annexed territory or zoning that is not in conformance to the pre-zoning designations for a period of two years after the completion of the annexation, unless the legislative body for the city finds at a public hearing that a substantial change has occurred in circumstances that necessitates a departure from the pre-zoning in the application to the commission.”

- 4.37. The city shall be the Lead Agency and LAFCo shall be the Responsible Agency, for environmental review of any pre-zone 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 14CCR, §15050, §15381, §15096, and §15051.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

- 4.38. 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 and consistent with sphere of influence policies.

4.4. DETACHMENT FROM A SPECIAL DISTRICT

- 4.41. The petitioner 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.
- 4.42. The proposal for detachment shall not be an attempt by the petitioner to avoid paying district revenues while still receiving district service.
- 4.43. If the 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.
- 4.44. Detachments shall not be approved if resultant boundaries are inconsistent with the affected agencies' Spheres of Influence. Spheres of Influence amendments for districts from which land will be detached shall be processed prior to, or concurrent with, any LAFCo approval that affects the Detachment.
- 4.45. Detachments shall not create "donut holes" unless overriding concerns exist.

4.5. FORMATION OF A SPECIAL DISTRICT

- 4.51. The proposed formation of a special district shall demonstrate that a need exists for a service which can best be provided by a special district and that there are no other alternatives that would provide the service in a more efficient manner (§56001, §56301).
- 4.52. The proposed entity shall be able to provide sufficient revenue to provide the requested service.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

- 4.53. 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. The project will not be approved if the costs are demonstrated to outweigh the benefits.
- 4.54. The proposal for the formation of a special district shall describe the relationship of the newly formed district to existing agencies. The proposed formation shall not undermine the logical expansion of adjacent or other governmental agencies or districts (§56301).
- 4.55. The proposed formation shall not give to any special interest group the status of a governmental agency.
- 4.56. If LAFCo determines that approval of the 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.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

5. INCORPORATION OF CITIES

5.1 COMPLIANCE WITH STANDARDS REQUIRED

LAFCo will approve an incorporation only if it finds that the proposal complies with the general policies and standards applicable to all changes of organization or reorganization.

5.2 DETERMINATION OF THE NEED FOR INCORPORATION

LAFCo will normally only favor a proposal for incorporation if the Commission finds that there is a significant unmet need for urban services or need for improved urban services within the territory for which incorporation is proposed. In determining whether such a need for urban services exists, the Commission will base its determination on:

- a. Current levels of service in the area to be incorporated.
- b. Whether the area proposed for incorporation is already substantially urbanized or applicable general plans, specific plans, or area plans and/or realistic population and growth projections demonstrate the need for urbanization of the affected area within the next five years.
- c. The Sphere of Influence plans for the jurisdictions currently providing services to the area.
- d. The preferences of the community proposing to incorporate.
- e. Whether the incorporation proposal can be structured to ensure the long-term preservation of open space or agricultural lands.
- f. The ability of the proposed city to provide services and sufficiency of revenues for those services.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

- g. The timely availability of an adequate water supply and sewer system.
- h. The extent to which the proposal will assist the proposed city with its fair share housing needs.
- i. Any comments from landowners.
- j. Information relating to existing land use designations.

5.3 EFFICIENCY REQUIRED

LAFCo shall approve a proposal for incorporation only if it finds that incorporation will result in an entity with the capability to provide the most efficient and consolidated forms of urban services to the affected population.

5.4 BALANCING ADVERSE IMPACTS

In making its decision on the incorporation, LAFCo shall weigh the benefits of the incorporation against adverse impacts of the incorporation on:

- a. Particular communities or groups in the proposed incorporation area or affected unincorporated area.
- b. Other service providers within the area of the proposed incorporation, including the County.
- c. Prime agricultural and open space lands and the prevention of urban sprawl.

5.5 COMPREHENSIVE FISCAL ANALYSIS REQUIRED

A comprehensive fiscal analysis (CFA) of the projected fiscal condition of the new city shall be prepared as required by Government Code §56815 and

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

§56815.2 The applicant shall contract with LAFCo to have LAFCo prepare the CFA directly at the applicant's expense. Any such CFA shall project income and expense for a period of ten years after incorporation. The CFA shall note all assumptions made and the methodology used to complete the report.

5.6 FISCAL SOLVENCY REQUIRED

LAFCo will only approve a proposal for an incorporation if the Comprehensive Fiscal Analysis required by §56815 and §56815.2 demonstrates that the proposed city will be able to fund municipal services and remain financially solvent.

5.7 FINANCIAL REVIEW REQUEST

- a. Any interested person, agency or appellant may request a review of the CFA by the Office of the State Controller within 30 days of the Commission's acceptance of the CFA as complete.
- b. Upon receipt of a request, the Executive Officer shall, in consultation with the State Controller's office, prepare an estimate of the cost of such a review and deliver the estimate to the requesting party. The party will be required to deposit the estimated cost of the analysis with the Executive Officer within 15 days after receiving the estimate, and execute an agreement to pay any additional cost over the estimate.
- c. Only upon payment of the deposit and execution of the payment agreement will the request be considered complete and forwarded on to the Controller's office. Failure to timely deposit the estimated cost and execute the payment agreement will be deemed a withdrawal of the request.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

- d. The Controller has 45 days from receipt of request to submit a report on the questions raised in the request for analysis. Any time lines contained in an incorporation process are “tolled” (extended) by the amount of time necessary to obtain this report.

5.8 SPHERE OF INFLUENCE PLAN

LAFCo will require, as part of the incorporation application, a draft sphere of influence plan for a proposed city and a master CFA service element unless it demonstrates a sphere of influence plan would be unnecessary.

5.9 REVENUE NEUTRALITY REQUIRED

LAFCo will only approve a proposal for incorporation if it meets the standards for revenue neutrality set forth in §56815.

5.10 PRIME AGRICULTURAL AND OPEN SPACE LAND

Prime agricultural and open space land which is not designated for urbanization within the next five years of the date of the receipt of the application shall not be included in any incorporation approval unless the Commission determines that the proposal is structured to ensure the long-term preservation of open space or agricultural lands.

5.11 COMPETING APPLICATION RELATIVE TO THE PROPOSED INCORPORATION

Where LAFCo receives more than one application affecting an area proposed for incorporation, and such competing application(s) is received within sixty (60) days of the submission of the subject proposal, the Commission shall consider such competing application(s) prior to approval of the incorporation proposal (§56655 and §56657).

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

ALSO SEE

Appendix 7.4, A Citizen's Guide to the Incorporation Process
Appendix 7.5, A Technical Guide to the Incorporation Process
Appendix 7.6, Revenue Neutrality Policy

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

6. DEFINITIONS

Pages one to thirteen of Chapter 2 of the Cortese-Knox-Hertzberg Act, Sections 56010-56081, contains a list of definitions most commonly referenced. This document does not reproduce that list. However, interested parties may obtain a copy of the list by contacting the Commission office. The following definitions are specific to local circumstances and operations.

6.1 AGRICULTURAL AREAS OR LANDS

Those lands defined as agricultural lands and prime agricultural lands respectively, in §56016 and §56064. In Madera County, agricultural lands intended for conservation are generally designated with one of the following general plan designations:

- a. Agriculture Exclusive
- b. Agriculture
- c. Agricultural Residential
- d. Open Space

6.2 AGRICULTURAL PRESERVE

An area devoted to either agricultural, recreational, or open space and compatible uses as defined in the Williamson Act, and established and made subject to a land conservation contract by resolution of a city or county after a public hearing (§51201(d)).

6.3 DEEMED FILED

A term referring to the time at which an application is determined by the Executive Officer to include all required elements, including fees and completed CEQA documentation, is accepted as completed, and begins to

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

be subject to processing time lines contained in the Cortese-Knox-Hertzberg and California Environmental Quality Act.

6.4 LIMITED SERVICE SPHERE OF INFLUENCE

Territory included within the boundaries of a limited purpose district that LAFCo has included within the Sphere of Influence of a multi-service district.

6.5 PENINSULA

An area of land with a relatively small line of boundary contiguity, surrounded on three or more sides by lands that are outside that boundary.

6.6 PRE-SUBMITTAL

An application provided to LAFCo for initial review purposes but not yet deemed filed.

6.7 RESPONSIBLE AGENCY

A public agency which proposes to carry out or approve a project for which a Lead Agency is preparing or has prepared an Environmental Impact Report or Negative Declaration. For the purpose of CEQA, the term refers to any public agency other than the Lead Agency which has discretionary authority over a project.

6.8 SERVICE UNIT

A measure used to calculate the exact service status, or capacity to provide services, of a service provider such as number of households, parcels, meters, equivalent dwelling units, or residential, commercial, agricultural or industrial units that are, can, will be or are proposed to be served.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

6.9 URBAN AREAS OR LANDS

Lands within an incorporated city, and those lands in community regions which are developed, or planned for development within the next ten years, for industrial, commercial, or residential uses, excluding residential uses.

APPENDICIES

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

APPENDIX 7.1

RULES OF CONDUCT FOR A MEETING

The Madera LAFCo encourages the participation of members of the public in its meetings. Meetings shall be conducted according to Robert's Rules of Order, unless the Commission, by majority vote, adopts other rules. The Commission may reschedule or continue items on the agenda. The usual order of business is to hear consent items first, followed by contested matters and hearing items, then other business.

The usual order of the public hearing for each agenda item is as follows:

The item is announced and the staff report and recommendation is presented. The public hearing is opened and each person requesting to speak on the agenda item is called to testify. All persons in support of a proposal will speak first. All persons in opposition of a proposal will speak second. The public hearing is then closed and the Commission discusses the item and/or takes action on the matter.

Any member of the public who wishes to address the Commission should sign in with the Clerk at the beginning of the meeting. Please write legibly so we can correctly record your name in the minutes. When you are called to speak, please come forward to the microphone. No person is allowed to speak from the audience, as the meetings are recorded for public record.

The Commission may limit the time for individual speakers or may limit the total time allotted for any item. The usual time limits are three minutes for speakers. The main proponent of an item and spokespersons representing groups will be allowed five minutes. Speakers are allowed to speak once on any agenda item. The principal proponent of a contested item will be allowed a three minute rebuttal. The Commission may ask follow-up questions of any speaker. Time limits are subject to the discretion of the Chairman.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

Any person wishing to address the Commission on any item under its jurisdiction but not appearing on the agenda should do so during the “Public Comment/Public Forum” agenda item. The Commission cannot take action on any item that is not listed on the agenda.

Participants in LAFCo proceedings are encouraged to be courteous and respectful. LAFCo expects to hear differing opinions and points of view during the course of its deliberations. Applause, remarks from the audience, and interruptions will not be tolerated by the Commission.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

APPENDIX 7.2

FEE SCHEDULE

In accordance with Government Code Section 65383, the Madera LAFCo has discretion to establish a schedule of fees for the costs and proceedings. The schedule of fees shall not exceed the estimated reasonable cost of providing the service and shall be imposed pursuant to Government Code Section 66016.

It is the policy of the LAFCo not to accept a resolution or petition application for a change of organization, reorganization, or sphere of influence amendment until all applicable processing and/or petition checking fees have been deposited with the Executive Officer.

With respect to LAFCo initiated studies of special district changes of organization or reorganization, it is the policy of the Commission that the individual or entity who requests such a study shall be responsible for payment of the applicable fee at the time of the Commission decision to initiate said study.

It is the policy of the LAFCo that any processing or petition checking fees are mandatory and non-refundable unless specifically waived by a majority vote of the Commission.

In addition the LAFCo fees and charges, there are State of California fees which are applicable in order to formally record an approved application with the State Board of Equalization.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

PAYABLE AT TIME OF FILING OF LAFCO APPLICATION

A. LAFCo Application/Processing Fees
(Checks payable to Madera LAFCo)

· BASIC FEES

Change of Organization

-	City Annexation and Detachment	\$1,750
-	District Annexation and Detachment	\$1,750
-	District Formation	\$1,750
-	District Consolidation	\$1,750
-	District Dissolution	\$1,750
-	District Merger and Establishment Of Subsidiary District	\$1,750
-	District Merger of Existing Subsidiary District	\$1,750
-	Incorporation (not including cost of Comprehensive Financial Analysis or Environmental Review)	\$4,500

Reconsideration Fee \$300

Reorganization

-	Two or More Changes of Organization	\$1,750
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Sphere of Influence

-	Sphere of Influence Amendment	\$1,750
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Special District Study

-	Applicant Fee	\$1,750
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LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

Out of Area Service Contracts

- Applicant Fee \$600

Transfer of Jurisdiction

- Applicant Fee \$600

SUPPLEMENTAL FEES

(In addition to basic fee)

CEQA Reviews

(LAFCo as Lead Agency)

- Environmental Evaluation \$375

- Preparation of Negative Declaration \$375

- Preparation of Mitigated Negative Declaration \$375

EIR Preparation

(LAFCo as Lead Agency)

\$925 Processing Fee plus actual cost of EIR preparation plus 10% of EIR cost to administer contract.

Comprehensive Fiscal Analysis

\$925 Processing Fee plus actual cost of CFA preparation plus 10% of CFA cost to administer contract.

Verification of Petition Signatures

\$0.50 per signature

By County Registrar of Voters

(Check payable to Madera County Registrar of Voters)

Fish and Game Administrative Recording Fee

\$25

(Check payable to Madera County Clerk)

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

B. STATE OF CALIFORNIA FEES

State law requires that for any project which has the potential to cause adverse impact on fish and/or wildlife, a fee be charged based on the type of environmental certification taken by the Lead Agency. If this fee was paid at the time the Lead Agency took action on the project prior to application to LAFCo (e.g., when a pre-zoning was adopted by a city council), evidence that the fee was paid can be supplied to LAFCo to satisfy requirement. No additional payment, other than the \$25.00 administrative charge for the County Clerk need be paid for subsequent actions on the same project.

State Department of Fish and Game Fee
(Check payable to State Department of Fish and Game)

- | | | |
|---|-----------------------------|----------|
| - | If an EIR | \$ 850 |
| - | If a Negative Declaration | \$1,250 |
| - | If De Minimis Determination | \$ - 0 - |

C. PAYABLE AT CONCLUSION OF CONDUCTING AUTHORITY PROCESS

After Commission approval and conducting authority ratification, the final step is recording of the action with the State Board of Equalization. State will not formally record action until payment of their fees.

(Check payable to State Board of Equalization)

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

Single Area Transactions

<u>Area Within Subject Territory</u>	<u>Single Area Mapping Fee</u>
- Less than 1 acre	\$ 300
- 1-5 acres	\$ 350
- 6-10 acres	\$ 500
- 11-20 acres	\$ 800
- 21-50 acres	\$1,200
- 51-100 acres	\$1,500
- 101-500 acres	\$2,000
- 501-1000 acres	\$2,500
- 1001-2000 acres	\$3,000
- 2,001 and above	\$3,500

D. MISCELLANEOUS FEES AND CHARGES

LAFCo

- Special Commission Meeting \$ Actual Costs
- Outside Consultant(s) \$ Actual Costs
- Document Copying \$ 0.15 per page
- Meeting Tape \$ Actual Costs
- Meeting Transcript \$ Actual Costs

State of California

- Request for State Controller's review of a Comprehensive Fiscal Analysis for incorporation Actual costs of review, plus a 10% administration fee, with a deposit as specified by the Madera LAFCo Policies, Guidelines, and Procedures Section 5.7
- Note: Payable by Party

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

Requesting the Analysis

Check payable to State Controller (\$5,000 deposit required at time of request)

PLEASE NOTE

SINCE FEES AND CHARGES ARE SUBJECT TO CHANGE WITHOUT NOTICE, EACH APPLICANT IS ENCOURAGED TO CONTACT THE LAFCO OFFICE PRIOR TO EXECUTING A WARRANT TO ENSURE PAYMENT AMOUNT IS CORRECT.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

APPENDIX 7.3

APPLICATION FORMS AND INSTRUCTIONS

- **Form 100 - Instructions and Information**
- **Form 101 - Project Information**
- **Form 102a - Applications (City Annexation Petition)**
- **Form 102b - Applications (Special District/Incorporation Petition)**
- **Form 103 - Consent Form**
- **Form 104a - Petitions (Registered Voter Petition)**
- **Form 104b - Petitions (Land Owner Petition)**
- **Form 105 - Environmental Information Form**

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

APPENDIX 7.4

A CITIZEN'S GUIDE TO THE INCORPORATION PROCESS

A. PURPOSES OF INCORPORATION

Incorporation of a city is defined as the formation of a city with corporate powers. The process shifts local government responsibility for an unincorporated area under the jurisdiction of a county board of supervisors to a newly established city council. This process is accomplished under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, the law governing Local Agency Formation Commissions (LAFCos) and local government organizational changes.

The reasons for incorporation efforts varies from place to place and include, but are not limited to, the following:

- To improve local public services,
- To capture increased revenues to support local services,
- To give a community local control over land use planning,
- To create a politically accountable governing body (a city council) in a limited geographic area, and
- To pursue local policy goals

B. INCORPORATION PROCESS

The procedure for the incorporation of an unincorporated community in the State of California is a lengthy and very complex process requiring at least a year of formal review. The purpose of the process is to ensure that any proposed incorporation is economically feasible and in the best interests of the community. An incorporation proposal must also be environmentally and logically sound from a public service standpoint. The procedures for incorporation should be followed to avoid unnecessary delays and to reduce the risk of potential litigation.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

The processing of an incorporation proposal can be divided into five separate stages. These are:

1. Developing the incorporation proposal
2. Initiating the incorporation proposal
3. LAFCo staff review of the incorporation proposal
4. LAFCo Commission proceedings
5. Election and the first year

1. Developing the Incorporation Proposal

Incorporations don't just "happen" - they are created by people who devote long hours, money and hard work to the project. The impetus for an incorporation typically starts with a group of residents forming an ad hoc "committee" to explore the possibility of incorporating their community. While each community is unique and has its own reasons for exploring incorporation, a committee of interested local residents is, almost without exception, the driving force of an incorporation. An incorporation committee defines and articulates incorporation goals on behalf of the community, raises funds, collects signatures, assembles application materials, works with LAFCo staff and consultants, testifies at hearings and negotiates changes in the proposal.

For any incorporation to succeed, it must have widespread community support since all successful incorporations must be approved by the voters. Therefore, ensuring that the residents within the area proposed for incorporation received complete information is a crucial task while developing the incorporation proposal and throughout the entire process. Since incorporation is often controversial, all people residing in the incorporation area as well as residents in adjoining communities may be directly affected by an incorporation. It is recommended that the incorporation committee meet with all affected groups.

Fund raising is another crucial task in developing an incorporation proposal. A by-product of the complexity of incorporation is its expense. Incorporation proponents

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

are responsible for the costs of an incorporation proposal which may exceed \$100,000 as evidenced by recent incorporation in other counties. Under specified conditions, incorporation proponents may request funding from the State for portions of the incorporation process. However, the funding is not certain and may not cover all costs of incorporation. In addition, the Commission will take no action on the incorporation proposal while the request for funding is pending before the State. Madera LAFCo processing fees are available upon request.

2. Initiating the Incorporation Proposal

There are certain basic requirements which must be met prior to initiation. First, existing State law requires that areas proposed for incorporation include at least 500 registered voters, that the area be entirely within the boundaries of one county and that the incorporating territory be contiguous and without islands of unincorporated territory surrounded by the proposed city.

After meeting the basic legal requirements for incorporation, the proposal can be initiated in one of two ways. One way is through a public agency. A resolution of application can be adopted by the legislative body of an affected agency which is defined as any city, district or county which contains territory within the proposed incorporation boundaries.

Incorporations can also be initiated by a petition signed by at least 25% of the registered voters or 25% of the number of landowners who own not less than 25% of the assessed value of the land in the incorporation area. The County Clerk/Recorder or County Assessor must verify the petitions and may charge a fee for verification of each signature. The costs of verification will be charged by the agencies which verify the signatures.

If the County Clerk/Recorder or County Assessor finds irregularities with petition signatures, they will disqualify the invalid signatures. Most incorporation proponents collect more signatures than required to allow for disqualifications. The incorporation proponents are required to file a "Notice of Intention to Circulate a

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

Petition” with the LAFCo Executive Officer prior to collecting signatures. Since State Law is very specific regarding the form and time limits for collecting signatures, it is strongly recommended that the incorporation proponents meet with Madera LAFCo staff prior to filing the Notice and to collecting signatures.

A completed LAFCo application for incorporation must be submitted to Madera LAFCo. The application must include a map and legal description of the boundaries of the proposed incorporation area, a feasibility study, including a fiscal analysis of the proposed incorporation, justification for the proposal, a plan for the transfer and provision of public services to a new city, special studies, the petition or resolution initiating the incorporation proposal, and other information as requested by the Executive Officer.

3. LAFCo Staff Review of the Incorporation Proposal

In its evaluation of the merits of an incorporation proposal, the LAFCo staff completes multiple tasks. The staff reviews all the application materials submitted, conducts its own analyses, performs the environmental review, verifies the property tax transfer and revenue neutrality amounts, solicits comments and produces a final report. As the Executive Officer deems appropriate, the submittal of additional information or studies, preparation of a revised fiscal feasibility study or changes in the proposal may be required. This process can take as long as twelve (12) months.

Throughout the entire process, LAFCo staff works cooperatively with all interested parties to ensure that a complete and accurate proposal is developed for consideration. When the proposed incorporation is ready for a public hearing, the Executive Officer will issue a Certificate of Filing, schedule the item for a public hearing and prepare a report with recommendation which will be sent to the LAFCo Commission for a public hearing.

Noticing requirements for LAFCo proposals require publishing in a paper of general circulation. LAFCo is generally not required to mail a notice to every resident within

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

a proposed incorporation boundary. Residents with an interest in an incorporation proposal should send a request to Madera LAFCo asking that they be added to the incorporation mailing list.

The following is a list of guidelines and policies which applies to proposed incorporations in California as well as specifically within Madera County.

- Madera LAFCo may approve incorporation if its finds that the proposal complies with the policies and standards applicable in State law and local procedures.
- All subject agencies whose service responsibility or territory would be changed as a result of the incorporation proposal shall participate in revenue neutrality negotiations to mitigate negative fiscal impacts of incorporation.

4. LAFCo Commission Proceedings

LAFCo (the Commission) is the body which is empowered by the State Legislature to deliberate on an incorporation proposal. The Madera LAFCo is comprised of five representatives - two from cities in Madera County, two County of Madera Supervisors, and one public member.

A public hearing will usually be scheduled within 60 days after the Executive Officer issues a Certificate of Filing. At the public hearing, the Commission hears the report of its staff and accepts the testimony of interested parties both supporting and opposing the incorporation. The Commission may continue the hearing to a future date or close the public hearing and act on the incorporation proposal.

The Commission has the authority to approve, deny or modify and approve the incorporation proposal. It also has the ability to add terms and conditions. If the Commission approves the proposed incorporation, it will, at the same hearing, adopt a resolution of approval, determine the final boundaries, the governmental structure of the new city, the base property tax and the provisional appropriations limit and

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

mitigation measures, if needed, for the impacts of revenue neutrality. It also establishes an effective date for the incorporation and may adopt a sphere of influence for the new city. If the Commission denies the proposed incorporation, no similar application can be filed for at least one year unless the Commission waives that prohibition.

Assuming approval by the Commission, the incorporation proposal is heard by the conducting authority which is LAFCo. The purpose of the conducting authority hearing is to count written protests. If 50% or more of registered voters in the proposed incorporation area submit written protests, the conducting authority terminates the incorporation process. If less than a 50% protest is submitted, the incorporation is scheduled for an election. If approved by voters, the incorporation becomes effective on the date determined by LAFCo.

5. Election and First year

The incorporation proposal is placed on the ballot for voter approval at the next available election. If the incorporation is successful, the new city will be liable for payment of election costs. In the event the incorporation is rejected by the voters, the County absorbs the election costs. If incorporation proponents request an earlier election than the next general election, they will be required to reimburse the County for the costs of the special election.

A simple majority of those voting is required to approve the incorporation. Included on the ballot, along with approval of the incorporation, are the names of those people running for the city council and an appropriations limit as required by law. The ballot may also call for the selection of the name of the new city and can include the question of whether the number of city council members shall be 5 or 7 and whether subsequent city council elections shall be by district or at-large. By State law, the first election is conducted at-large. Following confirmation of the proposed incorporation by the voters, the Executive Officer, as a final action, files a certificate of completion.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

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 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 the existing ordinances of Madera County. 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. (§57376)

Generally a new city provides no direct services during the transition period which is the time 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 "gear up" until the beginning of the next 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.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

APPENDIX 7.5

A TECHNICAL GUIDE TO THE INCORPORATION PROCESS

A. INITIATION OF PROCEEDINGS

The Cortese-Knox-Hertzberg Act of 2000 requires that areas proposed for incorporation include at least 500 registered voters (§56043), that the area be entirely within the boundaries of one county and that the incorporating territory be contiguous and without exclusions (islands). State law also empowers each LAFCo to adopt additional standards for incorporation proposals (§56375).

Incorporations can be initiated in two ways. A resolution of application can be adopted by the legislative body of an affected agency. An affected agency is any city, district or county which contains territory within the proposed incorporation boundaries.

Incorporations can also be initiated by a petition signed by at least 25% of the registered voters or at least 25% of the land owners owning at least 25% of the assessed value of land within the incorporation area (§56764). The County Clerk/Recorder or County Assessor must verify the petitions. Both means of initiating an incorporation are described in detail below.

1. Initiation by Petition of Registered Voters

Before circulating any petition for a change of organization, including an incorporation, the proponents shall file with the Executive Officer a “Notice of Intention” to circulate a petition that shall include the name and mailing address of the proponent and a written statement, not to exceed 500 words, setting forth the reasons for the proposal (§56700.4{a}).

A petition for incorporation of a new city requires the signatures of not less than 25% of the total number of registered voters residing in the area to be incorporated

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

(§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}). A sample petition is included in the appendices to this document. The text of a petition for city incorporation must include all of the following (§56700 et seq.):

- A statement that the proposal is made pursuant to Government Code §56000 et seq.
- A brief statement of the nature of the proposal and listing other 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 land owners.
- The names of three chief petitioners.
- A request that further proceedings be taken by Madera LAFCo pursuant to the provisions cited.
- A statement of whether the proposed incorporation is consistent with the spheres of influence previously adopted by LAFCo.
- The proposed name of the new city (optional).
- Any provisions for appointment of a city manager and appointment of elected officials except for city council members (optional).

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

The form of the petition must provide for each signer's printed name, street address (post office boxes are not sufficient), signature and the date of signature (§56704). Each signer of the petition must be either a registered voter or land owner within the boundaries of the proposed incorporation. For land owner petitions, each signature must be accompanied by a description of property owned within the incorporation area, such as an assessor's parcel number.

All signatures must be gathered within a six-month period from the date of the first signature (§56705). 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. Incorporation petitions must be submitted to LAFCo for filing within 60 days of the date of the last signature on the petition.

The total number of valid signatures necessary to meet the 25% requirement for a petition of registered voters will be established by the County Clerk/Recorder as of the date of the last voter registration report prior to the date of the first signature on the petition.

2. Application by Resolution of an Affected Agency

Any affected agency in the area proposed for incorporation may become the applicant by adopting a resolution of application (§56658). At least twenty (20) days 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). 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.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

3. Processing of Petitions

Within 30 days after the date the petition is filed with LAFCo, the Executive Officer shall cause the petition to be examined and shall issue a “Certificate of Sufficiency” or “Notice of Insufficiency” (§56706 {a and b}). Registered voter petitions are examined by the County Clerk/Recorder’s Office to determine the number of required signatures and the number of valid signatures (§56707). Land owner petitions are examined by the County Assessor’s Office to determine their validity based on the “most recent equalized assessment roll” (§56708).

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 proponents have 15 days after the date of this notice to submit a supplemental petition to the LAFCo Executive Officer (§56706{b}1). It is important to note that this is the only chance to additionally collect the required number of signatures.

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).

For incorporation proceedings where the petition is determined to be sufficient, the Commission may, upon receipt of a certification by the proponents of insufficient funds, take no action on the proposal and request a loan from the General Fund of the State. Repayment of the loan shall be made a condition of approval of the incorporation and shall be repaid within two years of the effective date of a successful incorporation. If the incorporation is denied by the Commission or is defeated at an election, the loan shall be forgiven (§56383{g}).

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

Madera LAFCo Suggestions for Incorporation Petition Efforts

In addition to the many requirements for petitions described in State law, Madera LAFCo offers the following suggestions:

- Madera LAFCo encourages incorporation proponents to collect at least 10% to 15% more signatures than the minimum requirement in order to compensate for signatures found to be invalid.
- Madera LAFCo encourages each circulator to review the map of the area with each signer of the petition to confirm his/her residence within the proposed incorporation boundary. This helps reduce the number of invalid signatures.
- Madera LAFCo encourages incorporation proponents to set a deadline for collection of all petitions. This helps circulators finish their task in time to meet the mandatory legal time limits.

B. CONTENTS OF INCORPORATION APPLICATION

Any application for changes of organization filed with Madera LAFCo must be accompanied by a feasibility study. This study is in addition to all other information required in an application (§56652). Completion of a standard LAFCo application form is required as part of the feasibility study. Sections 56652(d and e) provide the Commission and its LAFCo Executive Officer with authority to require additional information as needed to process the incorporation proposal.

Madera LAFCo requires that five (5) copies of the feasibility study be submitted to the Madera LAFCo office as soon as they are available. Upon formal initiation of the proposal, additional copies of the final version of the report may be required.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

An incorporation feasibility study must include the following information:

- A completed application.
- A brief discussion of the relevant history and characteristics of the proposed incorporation area.
- A plan for providing services to the incorporating area (§56653). This should include a description of the local agencies which presently serve the community, the range and level of services currently provided, improvements or upgrades or other conditions the proposed agency would impose or require, the information about how services would be financed and of the increased range and level of services potentially available in the community if incorporated.
- A rationale for the boundaries proposed for incorporation and a description of possible boundary alternatives. While a description of possible boundary options is not mandatory, LAFCo staff will analyze possible boundary alternatives. Most incorporation proponents include possible boundary alternatives to ensure, as much as possible, that areas consistent with incorporation goals are included. The rationale for boundaries should include a discussion of the effects of incorporation upon adjacent communities, special districts and the county.
- It is also recommended that a proposed sphere of influence be included with the incorporation application. As with alternate incorporation boundaries, most proponents include a proposed sphere of influence with the incorporation proposal to ensure that areas which may annex in the future are compatible with the new city. LAFCo staff will recommend a sphere of influence for the new city.

A sphere of influence proposal must also include a service review of the services provided in the incorporation area (§56430). Service review must

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

include, at a minimum, infrastructure needs or deficiencies, population projections and growth rates, financing constraints, cost avoidance opportunities, opportunities for rate restructuring, governmental structure options, evaluation of management efficiencies and local accountability and governance.

A draft comprehensive fiscal analysis (CFA). Following submission of an incorporation proposal, the Executive Officer will prepare, or cause to be prepared by contract, a comprehensive fiscal analysis (§56800). Data used in the CFA shall be from the most recent fiscal year (the fiscal year preceding the issuance of the certificate of filing) for which data is available. The CFA shall document the source and methodology used.

The CFA (and any review of that analysis by the State Controller) becomes a part of the LAFCo Executive Officer's report. The CFA must be completed and distributed not less than five (5) days prior to the date of the commission's hearing. Distribution of the report must include the principal petitioners and/or officers designated in the application, each agency whose boundaries or sphere of influence would be affected by the incorporation and all other parties filing written request for notice.

State law requires that a CFA includes a forecast of revenues and expenditures for the new city during the first three (3) 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 analyze the long-term financial feasibility of a proposed incorporation, Madera LAFCo requires budget projections for ten (10) years for a new city to allow for a more complete estimate of a new city's long-term financial feasibility.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

In preparing a CFA all direct and indirect costs which reflect actual or estimated costs shall be included as well as general fund costs used to support a fee-supported service where costs are not fully recovered through fees. The CFA shall also identify where transfer of services (and related costs) results in an administrative cost reduction to the county. The CFA shall use, as a comparison, the cost of services provided in cities similar in size and population. The direct and indirect cost of services to be assumed by the new city that are provided by state agencies shall also be included.

A CFA also includes a discussion of revenue neutrality (§56815). 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. Negative financial impacts to affected agencies must be identified and mitigation measures proposed.

- Fees. At the time of submittal of the application, proponents of the incorporation proposals are required to pay the actual LAFCo review fee. The payment of the fee will allow staff to open a file and initiate the determination of sufficiency of a petition and begin meetings with the proponents to develop a time frame and cost estimates.
- Map and Legal Description and Sphere of Influence. For incorporation applications, a map of proposed and alternative boundaries is submitted with the application. It is recommended that the incorporation map and legal description include alternative boundaries and a proposed sphere of influence. The final map and sphere of influence is developed following LAFCo approval. Incorporation proponents are responsible for the cost of preparing the final map and legal description. The following will be considered by Madera LAFCo when determining final incorporation boundaries, alternative boundaries and sphere of influence lines:

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

Service Delivery. Madera LAFCo will ensure that all residents within the proposed boundaries are provided adequate, efficient and economical levels of service.

Land Use. Madera LAFCo has no direct authority to set or alter existing land use patterns. However, it is important to include a variety of land uses within an incorporation area to ensure a balanced and viable economic base for the new city.

Topography, Geography, and History. Madera LAFCo will consider topography and geography in determining a logical incorporation boundary and alternatives. The validity of historic boundaries as a factor of consideration in the formation of city boundaries will also be considered.

Existing Cities, Communities and Spheres of Influence. Madera LAFCo will consider existing city boundaries and sphere of influence boundaries when determining an incorporation boundary and possible alternatives. The effects of the proposed incorporation upon adjacent communities, special districts and the county will also be considered.

Simplicity. Madera LAFCo encourages simple and logical boundaries. Parcels should not be split by city boundaries.

Existence of Service Districts. Madera LAFCo encourages consideration of existing special district boundaries to ensure the ease and economy of service delivery.

C. COMMISSION PROCEEDINGS

After required application documents and fees have been submitted to Madera LAFCo, the application will be processed by staff. The preparation of the Executive Officer's report, the State Controller's review (if requested) and the Commission's public hearing are all considered part of the LAFCo Commission proceedings.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

1. EXECUTIVE OFFICER'S REPORT AND RECOMMENDATION

The Executive Officer shall prepare a report on the incorporation application. The report shall address, but not be limited to, the following sections.

- Incorporation Boundaries (§56375). LAFCo will consider alternatives to the proposed incorporation boundaries and shall also establish a sphere of influence for the proposed new city.

- Plan for Services.

- Comprehensive Fiscal Analysis. The Executive Officer will notify all interested parties that the CFA 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.

- Terms and Conditions. LAFCo may specify terms and conditions which 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.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

- The effective date of incorporation.
- Continuation of fees and charges.
- Imposition of special and general taxes.
- Environmental Determination. Incorporations are a project under the California Environmental Quality Act (CEQA) and require environmental review. The four possible determinations which LAFCo can make are:
 - An incorporation proposal is exempt under §15320 of the CEQA.
 - If the CEQA initial study process shows no substantial evidence that the project will create significant adverse environmental impacts, the Commission may adopt a negative declaration.
 - If the initial study concludes that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent, the Commission may adopt a mitigated negative declaration.
 - If the initial study concludes that the project may produce significant environmental impacts, the preparation of an environmental impact report is required. Proponents will be required to pay LAFCo's actual costs associated with conducting environmental review.
- Property Tax Distribution. The task of calculating the property tax transfer is normally performed as part of the CFA.
- Provisional Appropriations Limit Determination. 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 permanent appropriations

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

limit shall be set at the first municipal election following the first full fiscal year of operation and shall not be considered a change in appropriations limit.

2. REVIEW OF CFA BY STATE CONTROLLER

Not less than 30 days following mailed and published notice that the CFA is complete and available for public review, any interested party may request that the State Controller's Office review the CFA (§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 a deposit of \$5,000 which will be credited toward the total costs of the Controller's review.

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}). The Controller's report shall be included in the Executive Officer's report.

After a request for the Controller's review has been submitted to Madera LAFCo, the Executive Officer will contract with the Controller for review of the CFA. The contract shall specify the elements to be reviewed and the estimated cost of the review. Prior to executing the contract, the party requesting the review will deposit with the Executive Officer the remainder of the Controller's total estimated cost of conducting the review. This estimate shall include the estimated charge by the State Controller, LAFCo staff costs, and costs for any consultants required to assist the State Controller with the review. If the Executive Officer is notified that the Controller expects to exceed the estimated cost, the party requesting the review shall be notified and will be responsible for depositing the additional amount with the Executive Officer prior to the Controller proceeding with completion of the review.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

3. LAFCO PUBLIC HEARING

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 hearing(s) on the proposal. The public hearing must be set within 90 days of the issuance of the certificate of filing and meet the requirements for notice.

The Commission will hold public hearing(s) on the incorporation proposal. All meetings must meet the legal requirements for public notice. At the public hearing, the Commission will hear testimony from all who wish to testify, although it may set guidelines for the length and order of testimony.

Commission Actions

At the conclusion of the public hearing, LAFCo may approve, amend and approve, or deny the proposed incorporation. The Commission must adopt a resolution of determination within 35 days of the close of the public hearing. If the proposal is denied, no similar proposal for incorporation involving the same or substantially the same area shall be initiated for one year after the date of adoption of the resolution terminating proceedings (§56880).

If LAFCo approves the incorporation proposal, the Commission's action must include a series of findings and determinations specifically addressing incorporation issues in the language of the resolution of approval (§56881 and §56882).

4. CONDUCTING AUTHORITY HEARING

LAFCo is designated by law as the "conducting authority" for city incorporations for the purpose of holding a hearing to count protest for an incorporation proposal.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

Conducting Authority Hearing

Within 35 days of LAFCo's adoption of its resolution of approval, the Clerk of the Conducting Authority issues a "Notice of Hearing" scheduling the date for the Conducting Authority hearing on the incorporation proposal. The notice is published in a newspaper of general circulation in the incorporating area. The proponents (and others requesting notice) also receive the notice by mail. The purpose of the hearing is to collect and count written protest from registered voters residing within the incorporation area. Madera LAFCo does not have the discretion at this point to modify the incorporation proposal or to terminate incorporation proceedings without sufficient protest being recorded. The conducting authority hearing must take place not less than 15 days from the date the notice was issued but may be continued for up to 60 days.

Written protests submitted at the Conducting Authority hearing will be verified and tabulated, and the Conducting Authority will take one of the following actions within 30 days of the conclusion of the hearing:

- Terminate the proceedings if more than 50% of the registered voters residing in the incorporation area submit written protest; or
- LAFCo will request the County Clerk/Recorder to conduct an election on the question of incorporation.

If, following the protest determination, an election is required, the County Clerk/Recorder begins the process of preparing the issue for a vote at the next general election. 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).

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

5. ELECTION

Elections for incorporation are usually on the ballot of the next general election. If a special election is requested, the incorporation proponents may be required to pay for the costs of the special election. If the incorporation is successful, the new city will be liable for payment of election costs. In the event the issue fails, the county absorbs the election costs (§57150{b} and §57132).

The LAFCo Executive Officer must draft an impartial analysis of the incorporation issue for inclusion in the incorporation ballot. The Commission will review the text of the impartial analysis and approve or modify it. The review must be completed in sufficient time to consider and approve or modify the analysis and submit the analysis to the officials conducting the election not later than the last day for submitting rebuttal arguments (§56898).

6. COMPLETION

Following a successful incorporation election, the County Board of Supervisors will certify the election results by adoption of a resolution and forward a copy to LAFCo. LAFCo staff will prepare a “Certificate of Completion” (the document which signals the end of the incorporation process) and a “Statement of Boundary Change”. The effective date of incorporation of the new city will be clearly shown on these documents. LAFCo staff will assemble documents to accompany the Certificate of Completion for recordation by the County Recorder’s Office. LAFCo staff is also responsible for filing incorporation completion documents with a variety of State agencies and affected departments of the county government.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

APPENDIX 7.6

REVENUE NEUTRALITY POLICY

PURPOSE

The provisions of Government Code §56815 declare the intent of the Legislature that the incorporation of new cities result in a similar exchange of both revenue and responsibility for service delivery among the county, the proposed city and other subject agencies and as a result minimize the long term negative fiscal effects incorporations have on counties.

Uncertainties in the interpretation of §56815 may impede incorporation of viable cities and/or invite inter-jurisdictional disputes following incorporation. These guidelines provide a framework for the development of terms and conditions related to the balancing of revenues and service responsibilities, otherwise known as “revenue neutrality,” and:

- Provide a process to analyze and mitigate the fiscal impacts of incorporation on the county resulting in stable, predictable financial outcomes for both the county and the new city.
- Define the terms and budget items to be negotiated under revenue neutrality requirements of §56815.
- Mitigate potential fiscal losses to the county without making incorporation impossible for local communities or precluding an adequate fiscal base for new cities.
- Specify how participants in the incorporation process can develop proposed terms and conditions of incorporation that will meet revenue neutrality criteria and the standards of this commission in making the findings required by §56815 and §56375 for approval.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

Policy Statement

It is the policy of this commission that implementation of revenue neutrality provisions of Government Code §56815 shall insure adequate protection of the financial stability of the county and other affected agencies while at the same time permitting the incorporation of communities demonstrating the necessary resources and capacities for self-governance. The legislative mandates for achieving revenue neutrality shall be implemented through a rational and predictable process for gathering information, determining the appropriate content of revenue neutrality agreements and providing for the revision of those agreements.

Procedural Guidelines

Incorporation proponents are required to submit a preliminary fiscal analysis (PFA) for evaluation by LAFCo staff. The PFA is augmented by LAFCo staff as necessary with county revenue and departmental cost data, the calculation of the property tax allocation, and analysis of fiscal and service level assumptions. The PFA is used as a starting point for the comprehensive fiscal analysis prepared by the Executive Officer or his designee. LAFCo staff convenes a revenue neutrality negotiating committee composed of representatives of the county, other affected agencies and the chief petitioners for the incorporation when the first draft of the comprehensive fiscal analysis is available. LAFCo staff will attend meetings of this committee in order to facilitate discussions and compliance with this policy.

The revenue neutrality committee will have an initial period of 60 days to negotiate an agreement to meet the requirements of §56815. At the conclusion of negotiations or the end of the 60 day negotiating period, the Executive Officer will certify that an agreement has been reached or has not been reached. If an agreement is reached, ratification by resolution of the County Board of Supervisors and by letter of the incorporation committee is returned to LAFCo staff for inclusion in the comprehensive fiscal analysis, staff report and recommendations.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

If the negotiating parties do not reach agreement, the status of the negotiations will be referred to the commission for workshop discussion of outstanding issues at the first available meeting as determined by the Executive Officer. If revenue neutrality issues are not resolved during the course of the workshop, the commission will direct the negotiating committee to resume negotiations for an additional 60 day period or other mutually agreed upon time.

If no agreement is reached by the revenue neutrality committee and ratified by the County Board of Supervisors and the incorporation committee after two 60 day periods, LAFCo staff will draft proposed terms and conditions for use in the comprehensive fiscal analysis and for recommendation to the commission at its public hearing.

Revenue neutrality agreements should adhere to the standards for content described in this policy. Such agreements should include a description of methodologies and assumptions leading up to the terms of the agreement. Revenue neutrality agreements should also provide for a process of adjustment after incorporation in order to account for unforeseen economic or legislative events significantly affecting the flow of local revenue.

CONTENT

Analytical Standards: Revenues/Expenditures Considered for Revenue Neutrality Purposes

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

- Revenue neutrality agreements shall be based on county costs and revenues for the most recent prior year for which data are available. 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.

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

- Expenditures for services transferred to a new city should be tabulated on a “net cost” basis. Services funded on a full cost recovery basis (such as building inspection) are by definition revenue neutral and should not be included in the analysis.
- Costs of capital improvements are not recurring costs and should not be included.
- Countywide costs for regional services and administrative functions which are required to support county governance of both incorporated and unincorporated areas should not be included in defining services transferred to the new city.
- 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.
- Restricted and unrestricted revenues should be evaluated separately. An agency may pay a portion of its annual revenue neutrality payment with restricted funds if both agencies agree and a legal exchange mechanism can be created.

Permissible Types of Terms and Conditions

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

Duration of Fiscal Impact Mitigation

The term of mitigation payments may be either ongoing or limited to a specific number of years. Ongoing revenue neutrality agreements may provide for the

LOCAL AGENCY FORMATION COMMISSION
POLICIES, GUIDELINES AND PROCEDURES

permanent sharing of revenues between the new city and affected agencies. Agreements that limit revenue neutrality payments should establish the term of payments in the following steps:

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

Method of Annual Payment

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

Effective Date of Incorporation

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