Penn Valley Municipal Advisory Council (PVMAC)

PUBLIC NOTICE – MEETING AGENDA

Notice is now given that a regular meeting of the PVMAC of members has been called and will be held on **Thursday, July 18, 2019** at **6:00 p.m.** in the Buttermaker’s Cottage, located at 18560 Penn Valley Drive, Penn Valley, CA.

Members:

- Michael Mastrodonato, Member & Chair
- Gordon Beatie, Member & Vice Chair
- Michael Sullivan, Member
- Bob Winters, Member
- Rick Nolle, Member
- Doug Moon, Member
- Nancy Peirce, Member
- Vacant, Member
- Vacant, Member

1. Call to Order, Roll Call and Pledge of Allegiance

2. Consent Agenda (Single Motion Needed)

   *All matters listed under the Consent Agenda are considered routine and will be enacted by one motion. There will be no separate discussion of these items unless a member of the PVMAC, audience, or staff requests a specific item to be removed from the Consent Agenda for separate action. Any item removed will be considered after the motion to approve the Consent Agenda.*

   - a. Approval of Agenda and Order of Business
   - b. Approval of Minutes from June 20, 2019

3. Public Comment

   *This time is set aside for persons wishing to address the PVMAC on any matter of interest that is not on the agenda. The PVMAC invites comments from the agenda items after discussion by the PVMAC Members. Speakers will be limited to three (3) minutes, unless extended by the PVMAC Chair. The PVMAC Chair reserves the right to further limit or exclude repetitious or irrelevant presentations. If written material is included, 20 copies of all information to be distributed to PVMAC members should be given to the Secretary prior to the meeting. Action will not be taken at this meeting on citizen comments. The PVMAC, however, after hearing from interested citizens, may place items under new business on a future agenda so proper notice may be given to all interested parties. If no one wishes to comment, the next scheduled agenda item will be considered.*

4. Penn Valley Incorporation – Presentation by Gladys Martines

5. An Application for an Administrative Development Permit for a Certified Farmers Market Farm Stand located at an existing permitted commercial nursery and a gift shop site located at 10493 Spencville Road, Penn Valley (PLN19-0116; MIS19-0007)
6. Citizens Academy Information/Discussion

7. Penn Valley MAC Membership Renewal Application/Recruitment Update

8. Penn Valley Area Plan Update Update

9. Items for the good of the Order Information/Discussion

10. Next PVMAC MEETING August 15, 2019 at 6:00 p.m. at the Buttermaker’s Cottage, located at 18560 Penn Valley Drive, Penn Valley, CA.

11. Adjournment estimated @ 7:30 p.m.

Times stated are approximate and subject to change. Agenda order is tentative and may be changed by PVMAC action without prior notice. This meeting will conform to the Open Meeting Act. Agenda discussions and report items are subject to action being taken on them during the meeting by the PVMAC at its discretion. The PVMAC provides the public the opportunity at meetings to address each agenda item during the PVMAC’s discussion or consideration of the item. Total time allocated for public comment on particular issues is limited. The meeting is accessible to the physically disabled. A person who needs disability-related accommodations or modifications in order to participate in the meeting shall make a request no later than five (5) working days before the meeting to the PVMAC to be considered. Requests for further information should be directed to Mike Mastrodonato, Chair of the PVMAC at (530) 265-1480.

AFFIDAVIT OF POSTING

Meeting Notice/Agenda of the PVMAC regular meeting, scheduled for July 18 2019, was posted per Open Meeting Law requirements at the following locations:

Eric W. Rood Administrative Center, 950 Maidu Avenue, Nevada City CA
Buttermaker’s Cottage, located at 18560 Penn Valley Drive, Penn Valley, CA.
Penn Valley True Value located at 17387 Penn Valley Drive, Penn Valley CA

AGENDA POSTED: Monday July 15, 2019
A regular meeting of the MAC was held on Thursday, June 20, 2019 at 6:00 p.m., in the Buttermaker’s Cottage, located at 18560 Penn Valley Drive, Penn Valley, CA.

Members:

Michael Mastrodonato, Member & Chair
Gordon Beatie, Member & Vice Chair
Michael Sullivan, Member
Stephanie Stevens, Member
Bob Winters, Member
Rick Nolle, Member
Doug Moon, Member
Andrew Burton, Member
Nancy Peirce, Member

1. Call to Order, Roll Call and Pledge of Allegiance

Meeting Called to Order at 6:05 pm

Absent: Gordon Beatie, Michael Sullivan, Doug Moon
Present: Michael Mastrodonato, Stephanie Stevens, Bob Winters, Rick Nolle, Nancy Peirce

2. Consent Agenda (Single Motion Needed)

   a. Approval of Agenda and Order of Business
   b. Approval of Minutes from March 21, 2019

Motion and second to approve the consent agenda. All Aye.

3. Public Comment

Sharon, Creekside Village Mobile Home Park, provided comment and a handout regarding a potential development project. The project has not yet been submitted to the County Planning Department. MAC advised to contact the Planning Department. The project may be discussed during the County Housing Element update.

Gladys provided public comment regarding incorporation. After discussion regarding the process it was decided the item would be placed on the July 18, 2019 agenda for presentation and discussion. Gladys will provide presentation of research regarding the process and requirements of incorporation.

Questions and discussion regarding agenda posting and meeting notice. It was decided that in addition to the current posting locations, future MAC agendas will be posted at the Penn Valley Shopping Center.
4. Initial Distribution/Project Description of Pilot Peak Brewery: An application requesting a Conditional Use Permit to convert an existing building into a restaurant and brewery at 17786 Penn Valley Drive (APN 051-120-019); PLN19-0107; CUP19-0011

Applicant provided a detailed overview of the project. The project includes a restaurant, brewery, wine bar, patio and distribution of kegs and cans. Applicant presented project elevations, drawings and plans including landscaping.

Discussion regarding the plans, bike path, cross walks, sidewalks, conscious growth and development, neighbor response, community, parking, traffic impact, hours of operation, noise fire district input and suppression, drainage during the wet season, commercial kitchen, sewer hook-ups, paved parking, gravel parking and games.

MAC responses to the project included preference for a bike path extension rather than a sidewalk. The project compliments the community. Discussion regarding sending a letter of support for the project.

Motion and second for direction to Staff to prepare a letter of support to the project planner which outlines the discussion held and states the MAC support for the project with points of concern. All Aye.

An appeal was received by the Clerk of the Board and will be scheduled at a meeting of the Board of Supervisors.

5. Penn Valley MAC Membership Renewal Application/Recruitment

Jeffrey Thorsby, Senior Administrative Analyst for the Board of Supervisors, noted that all members in terms expiring on June 30, 2019, can submit an application for reappointment to the Clerk of the Board of Supervisors.

6. Penn Valley Area Plan Update

Jeffrey Thorsby, Senior Administrative Analyst for the Board of Supervisors, provided an update of the last meeting. Attendance is decreasing at the public meetings. The next meeting will be held in August. Discussion regarding advertising. It was suggested that serving food may increase attendance.

7. Items for the good of the Order

None.

8. Next PVMAC MEETING July 18, 2019 at 6:00 p.m. at the Buttermaker’s Cottage, located at 18560 Penn Valley Drive, Penn Valley, CA.

9. Adjournment estimated @ 7:30 p.m.

Motion and second to adjourn. All Aye. Adjourned 7:20 p.m.
A Citizen’s Guide to the Incorporation Process

Purpose 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-Know-Hertzberg Local Government Reorganization Act of 2000, the law governing Local Agency Formation Commissions (LAFCOs) and local government organizational changes. Reasons for pursuing incorporation vary from place to place but is usually sought for the following objectives:

- 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 politically accountable governing body (a city council) in a limited geographic area; and
- To pursue local policy goals.

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.

Processing an incorporation proposal can be divided into five separate stages: (1) developing the incorporation proposal; (2) initiating the incorporation proposal; (3) LAFCO staff review of the incorporation proposal; (4) LAFCO proceedings; and (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 receive complete information is a crucial task during development of the incorporation proposal, and throughout the entire process. Incorporation is often controversial. Because people residing in the incorporation area as well as residents in adjoining communities may all be directly affected by an incorporation, it is recommended that the incorporation committee meet with all affected groups and prepare a preliminary incorporation feasibility study.

Fund raising is another crucial task in developing an incorporation proposal. A by-product of the complexity of incorporation is its expense. Incorporation proponents are responsible for the costs. Under specified conditions, incorporation proponents may request LAFCO to seek funding from the State for portions of the incorporation process (Government Code Section §56383 (g)). However, the funding is not certain and may not cover all the 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.

2. Initiating the Incorporation Proposal

There are certain basic requirements that 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 island 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 that 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 Registrar of Voters or County Assessor must verify the petitions and may charge a fee for verification of each signature. The costs of verification will be charged in the same manner and by the same agencies that bear the costs for verifying signatures for an initiation petition.

If the Registrar of Voters or County Assessor finds irregularities with petition signatures, the invalid signatures will be disqualified. Thus, to allow for potential disqualifications,
most incorporation proponents collect more signatures than required. The incorporation proponents are required to file a Notice of Intention to Circulate a 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 Stanislaus LAFCO staff prior to filing the Notice and to collecting signatures.

A completed LAFCO application for incorporation must also accompany the petition or resolution initiating the incorporation proposal. 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 and other information as requested by the Stanislaus LAFCO Executive Officer.

3. LAFCO Staff Review of the Incorporation Proposal

In its evaluation of the merits of an incorporation proposal, the LAFCO staff complete multiple tasks. The staff reviews all the application materials submitted, conducts its own analyses, performs the environmental review, determines 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 new fiscal feasibility study or changes in the proposal may be required. This process can take in excess of twelve (12) months.

Throughout the entire process, LAFCO staff works cooperatively with all interested parties to ensure that a thorough, complete and accurate proposal is developed for LAFCO consideration. When the proposed incorporation is ready for a public hearing, the Stanislaus Executive Officer will issue a Certificate of Filing, schedule the item for a public hearing and prepare a report with a recommendation, which will be sent to the Commissioners prior to the 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 a proposed incorporation boundary. Residents with an interest in an incorporation proposal should send a request to Stanislaus LAFCO asking that they be added to the incorporation mailing list.

The following is a list of guidelines and policies that apply to incorporation in California, as well as, specifically within Stanislaus County.

- Stanislaus LAFCO may approve incorporation if it finds that the proposal complies with the policies and standards applicable in State Law and local procedures.
Stanislaus LAFCO recognizes that special efforts should be made to recognize the integrity of unincorporated communities and, when appropriate, preserve their cohesive identify. This includes standards to determine when it is appropriate to exclude territory from a proposed incorporation boundary.

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 agency that is empowered by the State Legislature to deliberate on an incorporation proposal. Stanislaus County LAFCO is comprised of five (5) regular members and three (3) alternate members:

- 2 Representatives of the Board of Supervisors and 1 Alternate Supervisor appointed by Board of Supervisors;
- 2 Representatives of cities and 1 Alternate City Representative appointed by City Selection Committee; and
- 1 Public Member-at-Large and 1 Alternate Public Member appointed by the Commission.

A public hearing will usually be scheduled within 30 days after the Stanislaus LAFCO 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 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, establish the governmental structure of the new city, determine the base property tax and the provisional appropriations limit, and establish 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 protest, the conducting authority terminates the incorporation process. If less than 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 regular election. If the incorporation is successful, the new city will be liable for payment of election costs. The incorporation election is considered a special election and must be called on a regular election date. In the event the incorporation is rejected by the voters, the County absorbs the election costs. If incorporation proponents request a regular election that is earlier than the next general election, then LAFCO will require the proponents 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 LAFCO Executive Officer, as a final action, files a certificate of Completion.

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 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 Stanislaus 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.

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 assume corporate responsibilities. 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.
City Incorporation

Definition

Incorporation means the formation of a city with corporate powers. Any area proposed for incorporation as a new city shall have at least 500 registered voters residing within the affected area at the time proceedings are initiated with Stanislaus LAFCO (56043).

Initiation of Proceedings

Incorporation proceedings may be initiated either by a resolution of an affected local agency, a school district, or by petition. A petition must be signed by not less than 25% of the registered voters residing in the area to be incorporated, or by not less than 25% of the land owners who also own not less than 25% of the assessed value of land within the territory to be incorporated (56764).

Pre-Application

Prior to initiating an incorporation proposal, an incorporation committee should prepare a preliminary study to determine the feasibility of incorporation. It is important to conduct a preliminary feasibility study at an early stage (i.e. prior to initiation by a resolution or petition) to avoid the time and expense associated with pursuing an incorporation proposal that is financially infeasible. LAFCO staff may coordinate the collection of this data on behalf of the incorporation committee or the incorporation committee's consultant, depending on workload constraints and staffing availability. Prior to the collection of this data, a deposit will be required to cover the LAFCO staff time and materials expended in collecting the data. Any portion of the deposit remaining after the data has been collected will be credited toward the incorporation processing fee. If an incorporation proposal is not submitted, any remaining deposit will be returned to the incorporation committee.

Application

1. An application for incorporation must be accompanied by a feasibility study. This study is to be provided in addition to all other information listed in the general procedures section of this guide. An incorporation feasibility study should include the following information:

   A. A brief discussion of the relevant history and characteristics of the study area;

   B. A description of the local agencies that presently serve the community, with a discussion of the range and level of services currently provided;
C. A rationale for the boundaries proposed for incorporation, and a description of the proposed sphere of influence (if applicable) and possible boundary alternatives;

D. At a minimum, a forecast of revenues including estimate of property tax distribution and expenditures for the new city during the eight fiscal years following incorporation;

E. The effects on the costs and revenues of any affected local agency during the eight fiscal years following incorporation;

F. A discussion of the negative fiscal impacts of the incorporation on affected local agencies and measures proposed to mitigate the negative impacts;

G. A discussion of the range and level of services potentially available to the community after incorporation; and

H. A discussion of the effects of the incorporation upon adjacent communities, special districts, and the county.

2. Other elements may be necessary (for example, a discussion of commercial/industrial land use potential), based on the circumstances of the community in question.

3. Five copies of the draft version of the feasibility study should be submitted to the LAFCO office as soon as they are available. Upon formal initiation of the proposal, additional copies of the final version of the report will be required.

4. When the incorporation proposal has been initiated, the feasibility study will be released for public review in conjunction with Stanislaus LAFCO’s preliminary staff report. Public comments on the feasibility study will be considered in the preparation of the Executive Officer’s Comprehensive Fiscal Analysis as well as the Executive Officer’s Report and Recommendation to the Commission.


State General Fund Loan

Following a determination by the Registrar of Voters or the County Assessor that a sufficient number of petitions have been submitted, the Commission may, upon the receipt of a certification by the proponents that they are unable to raise sufficient funds to reimburse fees for the proceedings, take no action on the proposal and request a loan from the State General Fund of an amount sufficient to cover those expenses. The loan shall be contingent upon the availability of an appropriation for those purposes and in accordance with any provisions of the appropriation.
Repayment of the loan shall be made a condition of approval of the incorporation, if successful, and shall become an obligation of the newly formed city. Repayment shall be made within two years of the effective date of incorporation. If the proposal is denied by the Commission or defeated at an election, the loan shall be forgiven.

Review of Comprehensive Fiscal Analysis

Following submission of an incorporation proposal, the Executive Officer will prepare, or cause to be prepared by contract, a comprehensive fiscal analysis, and will release the analysis for public review. During a specified review period, any interested person may request the State Controller’s Office to review the comprehensive fiscal analysis prior to issuance of the Executive Officer’s report and recommendation (56801). The party requesting the review will be responsible for all costs associated with the review.

1. The Executive Officer will notify all interested parties that the comprehensive fiscal analysis 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 will specify the locations where the fiscal analysis can be reviewed and the time period in which the Controller’s review can be requested. The time period must be at least 30 days, and will begin 21 days after the notice is published.

2. A request for Controller’s review shall specify in writing the elements of the fiscal analysis that the Controller is requested to review, and the reasons the Controller is requested to review them. The request must include the LAFCO processing fee and a deposit, which will be credited toward the total cost of the Controller’s review.

3. After a request for the Controller’s review has been submitted to Stanislaus LAFCO, the Executive Officer will contract with the Controller for review of the comprehensive fiscal analysis. The contract will specify the elements to be reviewed and the estimated cost of the review. Prior to executing the contract, the person requesting the review will deposit with the Executive Officer the remainder of the Controller’s total estimated cost of conducting the review. If the Executive Officer is notified that the Controller expects to exceed the estimated cost, the person requesting the review will 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.

Revenue Neutrality

Any proposal that includes an incorporation should result in a similar exchange of both revenue and responsibility for service delivery among the county, the proposed city, and any other subject agencies. Further, the incorporation should not occur primarily for
financial reasons. The Stanislaus LAFCO may approve a proposal that includes an incorporation if it finds either of the following (56815).

1. The county and all of the subject agencies agree to the proposed transfer; or

2. The negative fiscal effect has been adequately mitigated by tax sharing agreements, lump-sum payments, and payments over a fixed period of time, or any other terms and conditions pursuant to Section 56886.

In preparing an incorporation feasibility study, negative fiscal impacts to affected agencies must be identified and mitigation measures proposed. For purposes of determining negative impacts and mitigation measures, the following procedures will be used by Stanislaus LAFCO:

1. For purposes of complying with revenue neutrality requirements, the Commission may exercise discretion in its determination that revenues and expenditures are substantially equal and these determinations will be made on a case-by-case basis.

2. Mitigation measures may range from one-time payments to ongoing annual transfers of revenue or taxes. The mitigation time period proposed in the feasibility study will evaluate any unique circumstances associated with the incorporation. Based on the evaluation, the feasibility study should propose whether mitigation should be based on tax sharing agreements, lump sum payments, or payments over a fixed period of time.

3. In determining fiscal impacts to affected agencies, expenditures and revenues will be based on the most recent fiscal year for which data are available, provided that the data are not more than one fiscal year old.

4. Fiscal impacts to restricted revenues and general fund revenues will be evaluated separately, and one revenue will not be used to offset a surplus or deficit in the other.

5. Revenues and expenditures that are considered full-cost recovery, e.g., current planning, building inspections, etc., need not be identified.

6. All identifiable service related expenditures being transferred to the proposed city, including costs for jail bookings, general government services, etc., will be considered in determining revenue neutrality.

7. Separate revenue neutrality determinations will be made between the proposed city and the county, and between the proposed city and any affected special district (s).
Commission Proceedings

Upon receiving a complete application, the following actions will be taken:

1. If the proponents have certified that they are unable to raise sufficient funds to reimburse fees for the proceedings, LAFCO shall take no action on the proposal and request a loan from the State General Fund of an amount sufficient to cover those expenses (56383).

2. Stanislaus LAFCO staff conducts an analysis of the proposal.

3. Any interested party may request the State Controller’s Office to review LAFCO’s fiscal analysis prior to issuance of the Executive Officer’s Report and recommendation (56801). The party requesting the review will be required to pay for all costs associated with the review.

4. The Commission conducts a public hearing to review the LAFCO staff analysis and receive oral or written testimony (56666).

5. The Commission then adopts a resolution approving, modifying, or disapproving the proposal (56880).

6. If the incorporation is approved, the Commission determines the final boundaries, government structure, the base property tax, and the provisional appropriations limit for the proposed city (56810 & 56812), and any terms and conditions of approval.

7. At the time the Stanislaus LAFCO approves an incorporation, or a reorganization that includes an incorporation, it may also determine the sphere of influence for the proposed new city. The Commission shall, in any event, determine the sphere of influence for any newly incorporated city within one year of the effective date of incorporation (56426.5). In determining the sphere of influence, the Commission will conduct a service review of municipal services (56430).

If the Stanislaus LAFCO wholly disapproves a proposal, no new proposal involving the same or substantially the same territory shall be initiated for one year after the date of the Commission’s resolution unless this provision is waived by the Commission (56884).

Conducting Authority Protest Proceedings

The Commission serves as the conducting authority for city incorporations (56029). After a public hearing and a review of written protests, the Commission can take one of two actions:

1. Terminate the proceedings if 50% or more of the registered voters residing in the territory protest; or
2. Order an election subject to confirmation of the voters if protests are received by less than 50% of the registered voters (57077 and 57101).

**Election**

An election is held, usually at the next general election. If the majority of votes are cast for incorporation, the Commission shall adopt a resolution confirming the order of incorporation. An incorporation election also provides for the election of city council members and other officers, and on the question of whether the city council in future elections shall be elected by district or at large (57101).

If the proceedings are terminated, either by majority protest or vote, no substantially similar proposal may be filed with the Commission for two years after the date of adoption of the resolution terminating proceedings adopted by the Commission. This requirement may be waived, however, if the Commission finds that the requirement would be detrimental to the public interest (57090).
Stanislaus LAFCO
City Incorporation

Initiation
(Area must have 500 registered voters)
(GC §56650, §56653, §56654, §56764)

Resolution of affected county-city-
special district-school district

Petition of registered voter/property
owner (25% petition threshold)

LAFCO meeting/hearing

LAFCO approval

Conducting authority hearing
(GC §57000)

Order incorporation subject to an election
(GC §57077, §57116)

Majority approval- order
incorporation (GC §57176)

LAFCO denial

Proceedings terminated
(One-year wait unless waived by LAFCO)
(GC §56884)

50% or more voter protest terminate
proceedings (GC §57078)

Less than majority approval-
terminate proceedings
(GC §57179)

Revised May 2012
A GUIDE TO THE LAFCO PROCESS FOR INCORPORATIONS

Governor’s Office of Planning and Research

October 2003
LAFCO Incorporation Guidelines

The Governor’s Office of Planning and Research
1400 Tenth Street, Sacramento, CA 95812-3044, 916/322-2318, www.opr.ca.gov

Tal Finney, Interim Director

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Toni Symonds - Project Manager, Community Vitalization Unit Director
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Doreen Updike - Administrative Analyst
Julia Ouellette - Administrative Analyst

October 2003
The Governor’s Office of Planning and Research (OPR) would like to acknowledge and thank the members of the Incorporation Task Force for their invaluable assistance in identifying key issues and for providing input into the development of LAFCO Incorporation Guidelines.

INCORPORATION TASK FORCE MEMBERS

- Chairperson, Kathryn Winter, Office of Planning and Research (OPR)
- Terry Roberts, Project Manager, State Clearinghouse Director, Office of Planning and Research (OPR)
- Toni Symonds, Project Manager, Senior Policy Advisor, Office of Planning and Research (OPR)
- Robert Braitman, Santa Barbara LAFCO
- Greg Brummels, State Controller's Office
- Tim Campbell, Santa Barbara LAFCO
- Christopher Carlisle, Speaker Hertzberg’s Office
- Tony Carstens, County of Riverside Executive Office
- Phil Carter, Pacific Municipal Consultants and City of Elk Grove
- William Chiat, County of Santa Barbara
- Cathy Creswell, Department of Housing and Community Development
- Baxter Culver, California State Association of Counties
- Harry Ehrlich, Olivenhain Municipal Water District and California Special District Association
- Carolina Jimenez-Hogg, Fresno County Planning & Resource Management Department
- Bill Mahoney, Orange County
- Anthony Manzanetti, Kronick, Moskovitz, Tiedemann, & Girard and City Attorney for the City of Elk Grove
- Jerry McClain, State Controller's Office
- Michael Oliver, City of Oakley
- Michael Ott, San Diego LAFCO
- Catherine Smith, California Special Districts Association
- Chris Tooker, Sacramento LAFCO
- Rita Velasquez, Elk Grove Community Services District

OPR would also like to acknowledge and thank Joyce Crosthwaite, Project Design Consultants and her excellent consultant team that assisted OPR in the development and implementation of the extensive public outreach and stakeholder consultation process and the writing of the final draft of the guidelines. Other members of her team included:

- Dan Miller, Rosenow Spevacek Group
- Charon Browning, SMB Associates
- Robert Ewing, Services Commodities Consulting

October 2003
# TABLE OF CONTENTS

## EXECUTIVE SUMMARY

I. INTRODUCTION .............................................................. 3  
   A. Background of Incorporation Guidelines .......................... 3  
   B. Purposes of the Incorporation Guidelines ........................ 4  
   C. How to Use the Incorporation Guidelines ........................ 4  

II. GETTING READY: PRE-INITIATION ................................. 5  
   A. Before Incorporation Starts: LAFCO’s Role ...................... 5  
   B. Before Incorporation Starts: The Proponents’ Role .......... 6  
      1. Alternatives to Incorporation .................................. 6  
      2. Consult with LAFCO .............................................. 7  
         a. Assist in Identifying Logical Boundaries ................. 8  
         b. Facilitate Early Discussions with Affected Agencies .. 8  
      3. Use of Consultants ............................................. 10  
      4. Initial Fiscal Feasibility Review .............................. 10  

III. INITIATING THE INCORPORATION ................................... 11  
   A. Initiation by Petition of Registered Voters .................... 11  
   B. Initiation by Petition of Landowners ............................ 12  
   C. Initiation by Resolution of an Affected Agency ............... 12  
   D. Processing of Petitions .......................................... 12  
      1. Notice of Intent to Circulate a Petition .................... 14  
      2. Form and Content of a Petition or Resolution .............. 14  
      3. Timing of Petitions ............................................. 15  

IV. PREPARING AN INCORPORATION APPLICATION .................... 16  
   A. Description of Incorporation Proposal .......................... 16  
   B. Comprehensive Fiscal Analysis (CFA) ............................ 17  
   C. Service Plan .......................................................... 18  
   D. Map and Legal Description of Boundaries ...................... 18  
   E. Sphere of Influence (SOI) and Municipal Service Review .... 19  
   F. Paying for the Incorporation Application ....................... 20  

V. REVIEWING THE APPLICATION: LAFCO STAFF ANALYSIS ........... 21  
   A. Preparation of the Comprehensive Fiscal Analysis (CFA) ...... 21  
      1. Gather Financial and Service Level Data ..................... 23  
      2. Establish a Service Plan ....................................... 24  
      3. Establish Base Year Costs ..................................... 27  
      4. Calculate Property Tax Transfer .............................. 27  
      5. Develop Budget Projections ................................... 31  
         a. Establish Budget Projections: Revenues .................. 32  
            i. Base Property Tax Allocation .......................... 32  
            ii. Special District Property Taxes ....................... 32  
            iii. Property Transfer Taxes .............................. 32  
            iv. Sales Taxes ............................................. 33  
            v. Transient Occupancy Taxes (TOT) ..................... 33
vi. State Revenues .................................................................33
vii. Franchise Fees ..................................................................33
viii. Road Related Revenues ......................................................33
ix. Transportation Related Local Sales Taxes .......................... 33
x. Other Revenues ..................................................................34
b. Establish Budget Projections: Expenditures ....................... 34
c. Determine An Appropriations Limit ..................................... 35
d. Effective Date and Transition Period ................................... 37
e. Financial Feasibility ......................................................... 39
B. Revenue Neutrality .......................................................... 39
  1. Background ..................................................................... 39
  2. Revenue Neutrality Process .............................................. 40
     a. General Requirements for Revenue Neutrality ............... 43
     b. Method of Calculation ............................................... 43
     c. Negotiation Process .................................................. 46
     d. Terms and Conditions ............................................... 47
C. Integrating CEQA with the Incorporation Process ............... 47
D. Executive Officer’s Report and Recommendation ............... 49
  1. Contents of Report ......................................................... 49
  2. Distributing the Reports .................................................. 50
  3. State Controller Review of CFA ........................................ 50
VI. COMMISSION HEARING AND DECISION .......................... 51
  A. Hearing Notice .................................................................. 51
  B. Conflicting Proposals ...................................................... 51
  C. Commission Actions ....................................................... 52
  D. Request for Reconsideration ............................................. 55
VII. CONDUCTING THE PROTEST HEARING .......................... 55
VIII. VOTING: THE INCORPORATION ELECTION ..................... 56
IX. CERTIFYING THE ELECTION RESULTS OF THE ELECTION .... 56
X. POST INCORPORATION .................................................... 57

APPENDICES

A. Incorporation Primer
B. Glossary
C. Initial Fiscal Feasibility Spreadsheet
D. Sample Forms
E. Notice to Circulate Petitions
F. Registered Voter Petition
G. Landowner Petition
H. Civil Rights & Environmental Justice Issues
I. Sample City Council Agenda for a New City
J. Sources and Uses of Municipal Funding
K. Incorporation Timeline
LIST OF EXHIBITS

1. Example: Incorporation Boundary and Alternative Boundaries .............................. 9
2. Typical Timeline for Processing Petitions ..................................................................... 13
3. Example: Transfer of Service Responsibility ................................................................. 26
4. Example: Calculation of Property Tax Transfer ............................................................... 29
5. Example: County Property Tax as a Percentage of Revenue Available for General Purposes ................................................................. 30
6. Example: Determination of Provisional Appropriations Limit ......................................... 36
7. Example: Calculation of Repayment to County ................................................................. 38
8. Typical Revenue Neutrality Negotiation Process ............................................................. 42
9. Example: Calculation of Revenue Neutrality Payment ..................................................... 45
10. Impact of the 2000 Amendments on Findings of Consistency ........................................... 54
Executive Summary

The Incorporation Guidelines are a result of legislation signed in 2000, which established a process for the creation of statewide guidelines. While the Cortese-Knox Act, the law governing Local Agency Formation Commissions (LAFCOs), had always specified minimum procedures and requirements for incorporation proposals, there were variations among the 58 LAFCOs in processing, content and requirements. Many LAFCOs and incorporation proponents developed a set of "best practices" which, while shared as much as possible, were not always widely disseminated. The intent of the guidelines is to gather these best practices and summarize existing legal requirements into minimum statewide guidelines. The Incorporation Guidelines are advisory and each LAFCO may adopt supplemental policies and procedures.

One of the biggest challenges to any incorporation proposal is readily available information. The Incorporation Guidelines provide easy to read information for citizens, for agencies and for proponents about the incorporation process, its timelines, and likely costs. A short "Primer" is included in the appendices to the Incorporation Guidelines, which provides a generalized overview of the entire incorporation process with common sense suggestions gathered from incorporation veterans. The Primer is short enough for LAFCOs and incorporation proponents to easily copy, fax and/or email.

However, incorporation is a complex process that must meet legal requirements. Therefore, the main body of the Incorporation Guidelines provides a step-by-step process, with hyperlinks to the relevant Government Code Sections, for those groups and individuals actively engaged in an incorporation. In particular, the Incorporation Guidelines include detailed information and examples about the type of information that should be included in the comprehensive fiscal analysis (CFA). The Incorporation Guidelines also include a suggested process to address the legal requirement of ensuring that incorporations are "revenue neutral".

Thorough preparation is essential for an incorporation. The first section of the Incorporation Guidelines includes recommendations gathered from the workshops and Task Force meetings for potential incorporation proponents, for LAFCOs, and for other affected agencies regarding the efforts that must precede initiating an incorporation proposal. It includes information for proponents about consulting with LAFCO to avoid potential pitfalls, the use of consultants and investigating alternatives to an incorporation. LAFCOs are encouraged to begin their preparation for an incorporation before a proposal is even submitted.

The determination of the possible fiscal feasibility of an incorporation has also been a challenge. Preparation of a CFA is expensive and if the proposed incorporation is infeasible, many proponents feel their efforts and money have been wasted. The Incorporation Guidelines contain a recommended "initial fiscal feasibility review" which is designed to help incorporation proponents decide whether to continue with an incorporation effort. The initial fiscal feasibility review only provides a one-year "snapshot" of some of a community’s financial assets and liabilities—it should never be used as a basis for a CFA which includes more comprehensive analysis of potential revenues and expenditures.
Initiating an incorporation is, in itself, a complex process with tight time limits and various legal requirements for processing and collecting signatures. The process, legal requirements and time limits for initiating an incorporation are described in Section III. As throughout the entire Incorporation Guidelines, hints from incorporation veterans have been included to help make the initiation process easier.

All incorporation proponents must prepare an application and while the specific requirements of various LAFCOs differ, there are certain basic requirements for all incorporation applications. Preparing an application to be submitted to LAFCO also requires payment of fees and the Incorporation Guidelines, Section IV, includes information regarding the probable costs of an incorporation application.

The review and analysis by LAFCO staff of an incorporation application is detailed and exhaustive as required by law. Section V, “Reviewing the Application: LAFCO Staff Analysis,” contains detailed descriptions of the financial information which needs to be included in a CFA. This section of the Incorporation Guidelines also includes information about revenue neutrality, recommends a sample process and discusses what data should be included (or not) in the ensuing revenue neutrality calculations. Section V also discusses the environmental review process for an incorporation.

All incorporations must be heard in public hearings and, if approved, must follow a legally defined process for a Conducting Authority hearing, elections and the final steps in the creation of a new city. These steps are also described in the last sections of the Incorporation Guidelines.

Finally, the Incorporation Guidelines also contain some basic information and sources of help for newly incorporated cities. LAFCO’s involvement in incorporation ends after a successful election but some information has been included to assist newly incorporated cities in making a transition to full municipal status. However, new cities should rely on their legal counsel and staff for more complete and updated information.

The Appendices (Section XI) contain sample forms and notices as well as the Primer.

Existing law requires each LAFCO to adopt written policies and procedures which may augment and supplement these Incorporation Guidelines. Incorporation proponents are strongly urged to consult with LAFCO in their own county to get copies of local policies and procedures.

The Incorporation Guidelines are available in PDF format that contains electronic links to the appropriate California Government Code sections. Clicking on the links will move the user to the appropriate section of the Government Code. The entire electronic file containing the Incorporation Guidelines may overwhelm some email servers. If you encounter problems downloading the guidelines it is recommended that you contact LAFCO in their county for a copy of the Incorporation Guidelines or go to your neighborhood library where computers are generally available for public use.
I. INTRODUCTION

This section provides the background to the development of the Incorporation Guidelines, an explanation of their purposes and information about the overall structure and how to use this document.

A. BACKGROUND OF INCORPORATION GUIDELINES

On September 26, 2000, Governor Gray Davis signed into law AB 2838 (Chapter 761, Statutes of 2000), authored by Assembly Speaker Robert M. Hertzberg. This legislation, titled the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 and codified as California Government Code Sections 56000 et seq., marked the most significant reform to local government reorganization law since the 1963 statute that created Local Agency Formation Commissions (LAFCOs) in each county.


Pursuant to the new requirements in Government Code Section 56815.2, the Governor’s Office of Planning and Research (OPR) was required to convene a task force composed of representatives of cities, counties, special districts, and local agency formation commissions for the purpose of creating statewide guidelines for the incorporation process.

Existing law further specifies that the guidelines serve as minimum statewide guidelines for the incorporation process. OPR recommends that LAFCO adopt supplemental policies and procedures that reflect local conditions to further assist the public and affected agencies in understanding the incorporation process.

The guidelines are required by law to include:

- Information to assist incorporation proponents to understand the incorporation process, its timelines, and likely costs.
- Direction to affected agencies regarding the type of information that should be included in the comprehensive fiscal analysis of incorporation, as well as suggestions for alternative ways to achieve fiscally neutral incorporations.

These guidelines were the result of an extensive public participation process. Three workshops were held in San Diego, Sacramento and Bakersfield in the fall of 2001 to gather public input into the content of the Incorporation Guidelines. A draft copy of the Incorporation Guidelines was posted on the OPR website for a 30-day public review period. During the public review period, three additional workshops were held in Ukiah, Tracy and Van Nuys to receive comments from interested parties regarding the draft document. In addition, an Incorporation Task Force was formed, comprised of members of LAFCOs, the State Controller, cities, counties, special districts and other interested parties, to identify key issues and provide input into technical content of the Incorporation Guidelines. The Task Force met three times and submitted numerous recommendations that have been incorporated into this document.
The Incorporation Guidelines reflect the Cortese-Knox-Hertzberg Act and related laws as were in effect on that date. Since state law may be amended periodically, it is critical that users of these Guidelines consult with the State of California, OPR, LAFCO staff and/or legal counsel to ensure that they are aware of the latest amendments to the relevant Government Code sections. In addition, each LAFCO may have policies, procedures and regulations that should be consulted before starting any incorporation effort.

B. PURPOSES OF THE INCORPORATION GUIDELINES

The Incorporation Guidelines are permissive and intended to be used as a framework for the consistent processing of incorporation proposals by LAFCO, by other affected local governments and by proponents. They are intended to serve as the minimum statewide guidelines for the incorporation process. The Guidelines are advisory to LAFCOs in the review of incorporation proposals (§56815.2) and are consistent with the existing Government Code.

C. HOW TO USE THE INCORPORATION GUIDELINES

The Incorporation Guidelines are available in hard copy (paper), CD-ROM and PDF format. The PDF and CD-ROM versions contain electronic links to the appropriate California Government Code sections. Clicking on the links will move the user to the appropriate section of the Government Code. The Guidelines are organized in the following manner.

Section I contains the Introduction including information about the background, purposes and use of the Incorporation Guidelines.

Sections II through IX contain a step-by-step guide for processing an incorporation proposal. It is advised that users of these Guidelines read the entire document first to gain an understanding of all the steps in incorporation. Government Code sections are included in parentheses so that readers can refer directly to the appropriate section of the law. Templates, exhibits and sample forms are provided where appropriate.

Section X contains a brief discussion of the responsibilities of a new city immediately following incorporation. While LAFCO’s involvement in incorporation generally ends soon after a successful election, this section has been included to assist newly incorporated cities in making a transition to full municipal status. However, new cities should rely on their legal counsel and staff for more complete and updated information.
Appendices A through G contain a timeline for the incorporation process, the Incorporation Primer, a Glossary, sample forms and notices, an initial fiscal feasibility review spreadsheet which can be used by proponents to conduct a preliminary fiscal review of the proposed incorporation, and an example of an agenda from a new city’s first city council meeting. If the initial fiscal feasibility review indicates potential problems, incorporation proponents can use that information as a basis for future decisions. The initial fiscal feasibility review spreadsheet can be used for a one-year budget but is not a substitute for a LAFCO application or a comprehensive fiscal analysis (CFA). CFAs include more detailed and specific revenues/expenditures for multiple years which are not included in the initial feasibility review spreadsheet. Use of the initial feasibility review spreadsheet as a CFA may result in inadequate financial information which can lead to longer processing times at LAFCO and ultimately more expense for incorporation proponents.

II. GETTING READY: PRE-INITIATION

The work of research and planning before initiating an incorporation is critical to the process. The following sections include a discussion of pre-initiation steps for LAFCO and incorporation proponents. OPR recommends that LAFCOs and proponents refer to Appendix A to review the steps in the overall process and Appendix C to review key terms used in these Guidelines before getting started.

A. BEFORE INCORPORATION STARTS: LAFCO’S ROLE

In order to ensure a fair and equitable deliberation by LAFCO on incorporation proposals it is important that LAFCO adopt policies and procedures prior to the submittal of any specific incorporation proposal. At a minimum, LAFCO should take a comprehensive view of its existing rules related to incorporations, determine whether modifications are warranted and make the information available to LAFCO’s Commission, local governments, special districts and the public. The following is a list of preparatory activities a LAFCO should consider:

- Review and update LAFCO general policies and procedures which relate to or affect incorporation.
- Review and update any specific incorporation policies, procedures, and guidelines.
- Establish a standard application form.
- Establish a schedule of fees.
- Establish standards for appropriate incorporation boundaries and alternatives.
- Establish a policy regarding the adoption of the Sphere(s) of Influence.
- Establish a process for triggering LAFCO facilitation in the revenue neutrality agreement process.
• Review LAFCO’s and the State’s rules and procedures related to financial contributions to incorporation efforts.

• Identify the County Auditor’s ratio.

The public, in particular, should have access to comprehensive information on the incorporation process, application forms, requirements, processing times, fee schedules, standards of review for incorporations and other relevant information.

LAFCO plays several roles in the incorporation process including educating the public on the incorporation process, facilitating communication between affected local government parties and community groups and reviewing/approving the proposal. When developing incorporation policies and procedures LAFCO should address each of these roles.

OPR recommends that LAFCOs consider developing a formal pre-application process which includes having community members meet early in the process with LAFCO staff to become better educated on the process and form a cooperative working relationship with LAFCO.

At a minimum the pre-application process should include the following procedures:

• An internal tracking system to maintain updated information on changes in incorporation law, contacts with potential incorporation groups/individuals and a mailing list of potential incorporation proponents.

• Development of an information packet on the incorporation process and procedures which LAFCO will follow in reviewing the proposal.

• A meeting and consultation among incorporation proponents, LAFCO and affected local agencies to clarify expectations of the incorporation process.

• A review of the draft application including boundaries, alternative boundaries, descriptions and other application requirements.

B. BEFORE INCORPORATION STARTS: THE PROPONENTS’ ROLE

1. Alternatives to Incorporation

Approximately 6,500,000 people, or 18% of California’s population, live in unincorporated communities. While these communities vary in size and character, they have the same range of challenges that cities face—changes in the character of their community, housing/jobs balance, provision of services, increased traffic and growth. Sometimes these communities see incorporation as the only means to acquire the political visibility and credibility to address their problems and they may be unaware of other alternatives.
OPR recommends that proponents investigate alternatives to incorporation prior to initiating an incorporation. As an example, a special district may be a more cost effective means for obtaining services than incorporation. “Choices for the Unincorporated Community: A Guide to Local Government Alternatives in California” (Institute of Governmental Affairs, University of California at Davis, September 1981) contains a comprehensive discussion of alternatives to incorporations for unincorporated areas.

Below is an excerpt from “Choices for the Unincorporated Community”. Residents considering incorporation, should consider the following questions before making a formal proposal to LAFCO:

- What is the problem, if any, driving the desire for change in the existing governmental structure? Can the problem be addressed by other means?
- What is the role of the County government in the community? Is the County willing or able to address the identified problems?
- What is the community’s relationship to other adjacent communities?
- What would the proposed boundaries look like and how would that affect other agencies and communities?
- What is the past history of local efforts to incorporate?
- How is the community changing?
- What is the community’s capacity for self-governance?
- How are services currently provided and how would they change? Does the area have the ability to provide municipal level services if incorporated?
- Who is likely to benefit from a change and who is likely to lose?

Once these questions are answered, residents may have a better understanding of why they want to incorporate and whether incorporation will actually solve the problem(s) which concern them.

2. Consult with LAFCO

Of all the actions incorporation proponents can take to help ensure a successful incorporation process, early and frequent consultation with LAFCO, and with other affected agencies, such as the County and special districts, is the most important. Proponents can often become overwhelmed by the technical, legal and procedural requirements of incorporation.

LAFCO staff should be available to assist proponents in understanding the process, in facilitating communication among all the affected agencies and in helping all parties avoid the most common pitfalls in an incorporation.
a. Assist in Identifying Logical Boundaries

Developing a logical incorporation boundary is the first and most fundamental step in an incorporation effort. It is strongly recommended that proponents develop the boundary in conjunction with LAFCO staff early in the process—even before deciding to move forward with any incorporation efforts. Developing logical boundaries and alternatives early in the process with LAFCO staff can save time and money for proponents. See Exhibit 1, Example: An Incorporation Boundary and Alternative Boundaries.

LAFCO’s policies and procedures on incorporations should include a list of criteria which LAFCO will use in evaluating boundaries and should reference items such as the existing boundaries and spheres of influence of existing cities and special districts, flood plains, communities of interest and the readiness of the area to incorporate.

b. Facilitate Early Discussions with Affected Agencies

LAFCO staff should be available to convene a meeting of representatives from affected agencies and other interested parties to ensure early input into the proposed incorporation proposal and boundaries.
EXHIBIT 1
EXAMPLE: INCORPORATION BOUNDARY
AND ALTERNATIVE BOUNDARIES

RANCHO SANTA MARGARITA

Proposed Incorporation Boundary

Alternative Boundary #2

Alternative Boundary #4

Alternative Boundary #6

Maps Courtesy of Orange County LAFCO

(Not all alternatives are displayed.)
3. **Use of Consultants**

LAFCO is legally responsible for the information in the Executive Officer’s report and must ensure that it is accurate, complete and objective. LAFCO may need assistance in meeting those requirements and may contract for an outside consultant. If LAFCO requires additional assistance, it may require that the proponents pay for the costs of hiring a consultant. Even if the proponents have already prepared an incorporation application, LAFCO may need to contract for an independent consultant to verify information and review the conclusions presented in the application.

Consultants are typically used for a variety of tasks. They may have the comprehensive and current knowledge of local government financing needed to prepare a CFA, of local government structure, of LAFCO polices and procedures and of incorporation processes. Consultants are often responsible for helping in establishing logical boundaries in conjunction with LAFCO; preparing and developing the CFA including revenue neutrality negotiations; preparing the application, reports, petitions and other forms as needed; monitoring the proposal; and providing technical assistance.

The manner in which consultants are used varies but generally matches one of the two following models:

- LAFCO hires the consultant. The proponents deposit money with LAFCO to cover consultant costs. The consultant works for and is paid by LAFCO with the funds deposited by the proponents. Proponents do not have control over the consultant’s work, timing or end product.
- Incorporation proponents hire the consultant. The consultant works for and is paid by the proponents. The proponents have more control over the preparation of the application and related studies.

Both methods can be successful. Proponents should discuss the use of consultants with LAFCO early in the process.

4. **Initial Fiscal Feasibility Review**

If proponents decide to take a closer look at incorporation, it may be helpful to perform a preliminary assessment of the fiscal resources available to a potential new city. The preliminary assessment, or initial fiscal feasibility review, is designed to help community groups conduct a quick appraisal of the potential for incorporation.

An initial fiscal feasibility review spreadsheet, provided in Appendix D, can be used by incorporation proponents to determine if revenues will be available to support municipal level services. The initial fiscal feasibility spreadsheet is NOT intended to be used as a substitute for a CFA. It is only intended to be used as a means to educate proponents regarding the fiscal potential for incorporation.
III. INITIATING THE INCORPORATION

The Cortese-Knox-Hertzberg Act requires that areas proposed for incorporation include at least 500 registered voters (§56043).

The legal process for incorporating a new city can be initiated (§56047), or started, in three ways. They are:

- **Registered Voters:** A petition signed by at least 25% of the registered voters residing in the proposed incorporation area is submitted to LAFCO. The Registrar of Voters must verify the number of valid signatures on petitions of registered voters.

- **Land Owners:** A petition signed by at least 25% of the landowners owning at least 25% of the assessed value of land within the proposed incorporation area. The County Assessor’s Office must verify the petitions of landowners.

- **Legislative Body:** The legislative body of an affected agency (§56014) can adopt a resolution of application. An affected agency is any city, special district or county which contains territory, including a sphere of influence, within the proposed incorporation boundaries. If the territory identified in the resolution is within the boundaries of a city the “incorporation” process would follow under the procedures for a special reorganization rather than the change of organization process.

Each method of initiation is described in detail in the following sections. Proponents are encouraged to check with LAFCO regarding local policies, procedures and guidelines. Sample forms are provided in Appendix E.

A. INITIATION BY PETITION OF REGISTERED VOTERS

Most incorporations are initiated through a registered voter petition. The process of explaining the goals of an incorporation effort to potential signers of petitions is an important step in the education of a community about the issues involved in and the purpose of incorporation. The process of gathering signatures on petitions is also a means of determining the level of support for incorporation and of gathering feedback from residents. If the incorporation is to ultimately succeed at the polls, it must have a high degree of community consensus and the petition effort is part of the process to develop that consensus.

A registered voter petition for incorporation requires the signatures of not less than 25% of the total number of registered voters residing in the area to be incorporated (§56764(a)). A sample petition is included in Appendix E.

Petitions must be prepared and processed in accordance with the legal requirements of the Cortese-Knox-Hertzberg Act. The legal requirements for the process, form and content of incorporation petitions are specific and complex. LAFCO’s Executive Officer and LAFCO legal counsel should review all registered voter petition forms when the proponents file a “Notice of Intent” (§56700.4) to circulate petitions with LAFCO. This preliminary review can lessen the possibility that petitions will be rejected for errors after the proponents have gathered signatures.
Existing law states that the signatures on an incorporation petition shall be verified by the elections official of the county and that the costs of verification of the signatures shall be provided for in the same manner and by the same agencies which bear the costs of verifying signatures for an initiative petition in the same county (§56383(e)). Proponents are strongly encouraged to check with LAFCO staff, the county and the Registrar of Voters in their own county to determine the costs of verification.

LAFCOs may adopt regulations governing contributors, expenditures and other activities relating to the petition process (§56700.1). Proponents should check with LAFCO about these regulations prior to circulating petitions.

B. INITIATION BY PETITION OF LANDOWNERS

Incorporations may also be initiated by petition of landowners (§56048). This type of initiation requires the signatures of not less than 25% of the total number of landowners who own property valued at a minimum of 25% of the total assessed value of land in the proposed incorporating area (§56764(b)). Landowner petitions are usually verified by the County’s Assessor’s Office which uses the most recent assessment rolls (§56708). However, in some California counties, the Registrar of Voters may verify landowner petitions as well as registered voter petitions. While infrequently used, this type of initiation may be more useful when less densely populated communities want to form a new city.

Except for the type of signatures collected and the agency which verifies the petitions, the requirements for the form, the content and the processing of an incorporation initiated by landowners is the same as for registered voters. The incorporation must still ultimately be voted on in an election and must ensure that it has the support of registered voters. The proponents among the landowners assume the leadership role in the incorporation process and are responsible for completion of all application requirements including the payment of fees.

C. INITIATION 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 (§56654). The resolution may also be preceded by a "Notice of Intent" and must include all of the same components as incorporation initiated by petition except for the signature requirements (§56654(c)). The agency board assumes the leadership role in the incorporation process and is responsible for completion of all application requirements including the payment of fees.

D. PROCESSING OF PETITIONS

The following sections explain the processing of petitions initiating incorporation. Exhibit 2 provides a Typical Timeline for Processing Petitions.
EXHIBIT 2  
TYPICAL TIMELINE FOR  
PROCESSING INCORPORATION PETITIONS  

Notice of Intent to Circulate Petition  
(§56700.4)  

↓  

Date of First Signature on Petition  
(§56705(a))  

↓  
180 days  

↓  

Date of Last Signature on Petition  
(§56705(a), §56706(2))  

↓  
30 days  
(law prohibits more than 60 days)  

↓  
LAFCO Submits Petition for Verification  
(§56706)  

↓  

Petition Sufficient:  
LAFCO Issues Certificate of Sufficiency  
(§56706(a))  

↓  
INCORPORATION PROPOSAL PROCEEDS  

↓  

Petition Insufficient  
(§56709)  

↓  
Additional Signature Collection  
(§56706(2))  

↓  
15 days  

↓  
LAFCO Certifies Results  
(§56706(c))  

↓  
Petition Insufficient  
↓  
PROPOSAL TERMINATED
1. Notice of Intent to Circulate a Petition

Before circulating a petition for incorporation, incorporation proponents must file a "Notice of Intent" (§56700.4) to circulate a petition or to adopt a Resolution of Application. Although recommended by OPR, affected local agencies are not required to circulate a Notice of Intent to LAFCO and other affected and interested agencies prior to the adoption of the resolution (56654). The Notice of Intent must include the name, mailing address and signature of the proponents (§56068) and a written statement (not exceeding 500 words) stating the reasons for the proposed incorporation. The Notice of Intent must be filed with LAFCO. A sample Notice of Intent form is included in Appendix E.

Only after filing the Notice of Intent with LAFCO may the petition be circulated. LAFCO’s Executive Officer is required, upon receiving the Notice of Intent, to notify affected agencies and jurisdictions (§56658).

2. Form and Content of a Petition or Resolution

The text of a petition or resolution of application is similar for all three types of initiation. Sample petition forms and notices are included in Appendix E. The text of a petition or resolution of application must include the following (§56700):

- A statement that the proposal is made pursuant to Government Code Section 56000 et seq.
- A brief statement of the nature of the proposal and listing of other changes of organization. This could include the special districts that are proposed for reorganization as a result of the incorporation, detachment or annexation of territory and or changes in applicable governmental boundaries.
- A map and description of the proposed incorporation boundaries and alternatives.
- Proposed terms and conditions. Although LAFCO has the ability to add, delete or modify proposed terms and conditions, the incorporation proponents should include some terms and conditions to ensure that petition signers understand the consequences of incorporation.
- A statement of the reason(s) for the proposed incorporation. A clear statement of the reasons for incorporation is critical for the education of petition signers.
- A statement as to whether the petition is signed by registered voters or landowners.
- The names of three proponents who will be the main contacts for the proposal.

In collecting signatures on a petition incorporation proponents should plan on collecting at least 10% to 15% more signatures than the minimum requirement to compensate for signatures found to be invalid. Each circulator of a petition should review the map of the incorporation area with each signer of the petition to confirm his/her residence. This helps reduce the number of invalid signatures.

A petition is a legal document and must be prepared in accordance with the requirements of the law. It is strongly recommended that the proponents and LAFCO use the "Notice of Intent" filing as an opportunity to review the petition to ensure legal conformance.
• A request that further proceedings be taken by LAFCO pursuant to the Cortese-Knox-Hertzberg Act.

• A statement of whether the proposed incorporation is consistent with the spheres of influence previously adopted by LAFCO.

The petition can also propose a name for the new city or town (§56722), and provisions for appointment of a city manager and other city officials (§56723).

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 landowner, depending on which type of petition is being circulated, within the boundaries of the proposed incorporation. For landowner petitions, each signature must be accompanied by a description of property owned within the incorporation area, such as an assessor's parcel number.

3. Timing of Petitions

All signatures must be gathered within a six-month (6) period from the date of the first signature (§56705). 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 as of the date of the last voter registration report prior to the date of the first signature on the petition (§56071, §56706) and Election Code 9113-9115). It is important that incorporation proponents plan the timing of their petition drive carefully to meet these statutory requirements. Within 30 days after the date a petition is received by LAFCO, the Executive Officer shall cause the petition to be examined and shall issue a "Certificate of Sufficiency" or "Notice of Insufficiency" (§56706(a)) after the results of the examination are received. The County's Registrar of Voters examines registered voter petitions to determine the number of valid signatures (§56707). Landowner petitions are examined based on a comparison of signatures and the "most recent assessment roll" (§56708).

If the petition is determined to be insufficient based upon the number of signers, LAFCO's Executive Officer will notify the proponents by certified mail. The proponents have 15 days after the date of this notice to submit a supplemental petition to LAFCO's Executive Officer (§56706(b)(1)). It is important to note that this 15-day period is the only chance to collect the additional number of required signatures if the original number of signatures is insufficient.

Within 10 days of the date the supplemental petition is filed, LAFCO's 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 incorporation effort in the same area (§56709). Without prejudice means that proponents can begin the process of initiating another incorporation without waiting a specified period of time.
IV. PREPARING AN INCORPORATION APPLICATION

Incorporation applications must include a variety of information and studies. LAFCO should develop and publish a standard list of information which is to be included in the application. The minimum information (§56652) which must be submitted to LAFCO includes:

- A petition or resolution of application initiating the proposal;
- A description of the incorporation proposal;
- A map and legal description of the proposed incorporation area.
- The names of the officers or persons, not to exceed three in number, who are to be furnished with copies of the Executive Officer’s report and who are to be furnished with mailed notices and copies of the Executive Officer’s report.

LAFCO is also authorized to require other data and information necessary for the analysis of the application.

While some incorporation applications may also include a CFA, it is strongly recommended by these guidelines that the preparation of CFAs be started after submittal of an incorporation application to LAFCO.

The Cortese-Knox-Hertzberg Act’s timelines for submittal of petitions, noticing and other requirements related to an incorporation application are mandatory. However, the timelines for review and processing are generally advisory. Proponents should consult with LAFCO to determine a schedule for processing an incorporation application which will be consistent with the requirements of the individual LAFCO and the law (§56106).

Subsections (d) and (e) of Section 56652 provide LAFCO’s Commission and its Executive Officer with the authority to require additional information as needed to process the incorporation proposal. State law also empowers each LAFCO to adopt additional written procedures for the evaluation of proposals (§56375(g)). Incorporation proponents are strongly encouraged to check with LAFCO staff in their county to obtain an application and to determine if there are specific procedures or policies adopted by that LAFCO which may affect the incorporation.

A. DESCRIPTION OF INCORPORATION PROPOSAL

Existing law requires each incorporation proposal to include information relative to the “nature” of the proposal (§56652(b)). OPR recommends that the nature of the proposal be described in the following manner.
• The reasons for proposing incorporation. The reasons for incorporation vary and include, but are not limited to: improving local public services; capturing existing or accessing new revenues to support local services; giving a community local control over land use planning; creating a locally accountable governing body; and, pursuing local policy.

INCORPORATION PROPOSAL
While capturing existing or accessing new revenues may be a motivating factor for proposing incorporation, the Cortese-Knox-Hertzberg Act states that incorporations should not occur primarily for financial reasons (§56815).

• A clear statement of concerns, issues or problems, if any, with the existing governmental structure.
• Any changes proposed from the way public services are currently being provided. For example, if the incorporation proposes the reorganization of special districts as part of the incorporation, those governmental changes should be included in the description of the incorporation proposal.

• A brief history of the incorporation area including the results of any previous incorporation efforts.

• Demographic, geographic and economic data which describe the incorporation area. This information can be readily obtained from the United States Census Bureau or other public agencies.

B. TIMING OF THE COMPREHENSIVE FISCAL ANALYSIS (CFA)

Following submission of an incorporation application, LAFCO’s Executive Officer will prepare, or cause to be prepared by contract, a CFA and will release that analysis for public review (§56800).

While some incorporation proponents may prepare their own CFAs and submit them to LAFCO with their application, LAFCO has the ultimate responsibility for ensuring that the information is accurate, complete and objective. Some LAFCOs may require that the proponents pay for the costs of hiring an independent consultant to verify or supplement the work of the proponent’s consultant. This can increase the processing time for incorporations and add to the costs. OPR recommends that preparation of the CFA not begin until after a successful initiation of the incorporation and after submittal of an application to LAFCO.

LAFCOs are encouraged to adopt written policies and procedures for a pre-initiation review of an incorporation proposal, preparation of a CFA (§56300(a)), a schedule of fees and clear and consistent standards of review for a CFA and an incorporation proposal. LAFCOs are also encouraged to work closely with counties and incorporation proponents to facilitate the preparation of the CFA and a revenue neutrality agreement. The steps in the preparation of a CFA are described below under Section V. A, Preparation of the Comprehensive Fiscal Analysis.
The CFA becomes a part of the Executive Officer’s Report and is submitted to the Commission prior to their consideration of the incorporation proposal (§56665).

C. SERVICE PLAN

All incorporation applications must be accompanied by a service plan. A service plan is a proposal submitted by the incorporation proponents detailing which municipal services, after incorporation, will be provided by the new city or by other agencies (§56653). A service plan should include, at a minimum, the following:

- A description of the local public agencies presently serving the area including maps of service areas;
- The range and level of services currently provided;
- Proposed changes in the governmental structure (e.g., districts proposed to be dissolved and/or merged with the new city); and
- Increased or decreased range and level of services potentially available in the community if incorporated and how the difference, if any, will be financed.

<table>
<thead>
<tr>
<th>Services Which A New City May Assume</th>
<th>Services that the County Must Continue to Provide</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law enforcement</td>
<td>Special services (welfare, child protective services, etc.)</td>
</tr>
<tr>
<td>Fire protection and paramedics (some cases)</td>
<td>Health services (medical care, mental health, public health)</td>
</tr>
<tr>
<td>Water and sewer (some cases)</td>
<td>Criminal justice (courts, prosecution, jails, probation, etc.)</td>
</tr>
<tr>
<td>Planning (land use, environmental review, zoning, building inspection, etc.)</td>
<td>Regional parks (in some cases)</td>
</tr>
<tr>
<td>Public works (streets, engineering, traffic signals, streetlights, drainage, etc.)</td>
<td>Elections and voters services</td>
</tr>
<tr>
<td>Local parks and recreation</td>
<td>General government (assessor, treasurer, recorder, tax collector, etc.)</td>
</tr>
<tr>
<td>Libraries (in some cases)</td>
<td>Planning and environmental services</td>
</tr>
<tr>
<td>Animal control</td>
<td>Special Districts may also be formed and/or expanded to provide a wide variety of services.</td>
</tr>
</tbody>
</table>

D. MAP AND LEGAL DESCRIPTION OF BOUNDARIES

All incorporation applications must include a map and legal description of the proposed incorporation boundaries including a rationale for the boundaries proposed and a description of possible boundary alternatives. Since LAFCO has the legal responsibility to consider, among other items, the effect of the proposed incorporation on the provision of services, its social and economic impact on the county and proposed city, and its conformity with LAFCO's policies on orderly development (GC 56668), incorporation proponents are strongly encouraged to work with LAFCO staff early in the process to develop a logical incorporation boundary.

OPR recommends that an incorporation boundary recognize other local agencies’ boundaries and SOIs; include a variety of land uses; consider topography and transportation routes;
OPR Incorporation Guidelines

recognize communities of interest especially if environmental justice communities may be affected; and not create islands of unincorporated territory.

Government Code Section 556668(f) states that one factor to be considered when reviewing a proposal is the "...definiteness and certainty of the boundaries of the territory, the nonconformance of the boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory and other similar matters affecting the proposed boundaries". To ensure consistency with this requirement, incorporation applications should include a metes and bounds legal description. However, individual LAFCOs may require the preparation of a metes and bounds description at different stages during the process. Incorporation proponents are responsible for the cost of preparation of both the map and the metes and bounds legal description. Please refer to Section II, B-2 for a more complete list of factors which determine a logical incorporation boundary and alternatives.

Existing law requires LAFCO to consider alternative boundaries (556668). OPR recommends that incorporation proponents begin consultation with LAFCO as early as possible to reduce the likelihood of having to pay for the development and analysis of additional boundary alternatives after the application is filed.

E. SPHERE OF INFLUENCE (SOI) AND MUNICIPAL SERVICE REVIEW

A Sphere of Influence (SOI) is defined as the "...probable physical boundaries and service area..." (556076) of an agency. An SOI includes territory not within the corporate limits of the agency but which is expected to be annexed at some time in the future. There may be communities or territory closely connected with a proposed incorporation area which are not ready to be included in the new city but need to be acknowledged for future planning. The impacts of incorporation on the proposed SOI should be considered as part of the incorporation application and may, although not required to, be included in the CFA.

It is recommended that incorporation proponents develop a proposed SOI together with the proposed incorporation boundary and alternatives. LAFCO may either approve a SOI for a new city at the time of LAFCO’s Commission hearing or delay consideration of the SOI for up to one year after voter approval (556426.5).

Beginning in January of 2001, LAFCOs are required to undertake a municipal service review prior to the adoption or update of an SOI (556430). Incorporation proponents need to consult with LAFCO to determine how and when a service review will be prepared for an incorporation proposal or a newly incorporated city. OPR recommends that LAFCO develop a policy that clearly states when a service review for an incorporation proposal or a newly incorporated city will be conducted. The policy should also clearly state when a service review will be prepared for other agencies whose boundaries or SOIs may change as a result of incorporation.
F. PAYING FOR THE INCORPORATION APPLICATION.

Fees for incorporation proposals vary and are set by each LAFCO. All LAFCOs should adopt general fee schedules to allow potential applicants the ability to estimate the potential incorporation costs.

Incorporation proposals can be charged on an actual cost-recovery basis, on a deposit system, as a set fee or by other methods. Proponents are required to fund the incorporation effort, including the costs of LAFCO to develop information and process the application. The cost of incorporations has ranged from $50,000 to $150,000 based on the experience of several incorporation efforts over the past 5 years.

Since incorporation is almost always a volunteer effort, raising the necessary funds can be a challenge. For incorporation proceedings that have been initiated by a successful petition, LAFCO may, upon receipt of substantial proof submitted by the proponents that they are unable to raise sufficient funds, take no action on the proposal and forward a written request for a loan to the Controller of the State of California (§56383(g)). This is a new provision of the Cortese-Knox-Hertzberg Act. The proponent’s written request should state the amount requested and should be sufficient to cover incorporation expenses. The written request may also include, but is not limited to, the following:

- Bank statements of incorporation accounts
- Audit of funds of incorporation accounts
- Affidavits signed by the proponents
- Information as necessary to verify that the incorporation proponents are unable to raise sufficient funds

LAFCO shall forward the loan request, along with the certification of insufficient funds as supplied by the proponents, to the State Controller by registered mail. State funds are NOT automatically granted to an incorporation effort and are subject to availability and other budgetary limitations of the State. It should be noted that LAFCO has no discretion or authority over the State funds or incorporation loans; LAFCO’s role is to simply forward the request and certification to the State Controller for consideration.

If the loan is approved, repayment of the loan shall be made a term and condition of LAFCO approval and may be included as part of the ballot measure when incorporation goes to the voters. If the incorporation is successful, the loan shall become a legal obligation of the newly formed city and shall be shown as an expense in the budget projections of the CFA for the proposed city. Repayment of the loan must be made within two years of the effective date of incorporation. If the incorporation proposal is denied by the Commission or defeated at an election, the loan shall be forgiven.
V. REVIEWING THE APPLICATION: LAFCO STAFF ANALYSIS

After the incorporation application and fees have been submitted, LAFCO staff will mail a notice of receipt of the application to all interested and affected agencies and the proponents (§56658).

LAFCO staff then has 30 days to review the application for completeness. If the application is considered complete, LAFCO’s Executive Officer will issue a Certificate of Filing (§56651) which indicates that the application is ready for a public hearing. LAFCO must then set a public hearing for the incorporation within 90 days. However, if the application is not complete, LAFCO’s Executive Officer must notify the applicants within 30 days of submittal if the application is incomplete and must specify those parts of the application which need additional information (§56658(g)) to be deemed complete.

Once the application is complete, LAFCO staff must analyze the merits of the proposal, evaluate it for consistency with existing laws and adopted LAFCO policies and procedures, conduct the environmental review, prepare or cause to be prepared the CFA, complete the revenue neutrality process and prepare the Executive Officer’s report. As necessary and as provided in the Cortese-Knox-Hertzberg Act (§56652), LAFCO’s Executive Officer can also request additional information to process the incorporation application. The staff review may take up to a year depending on the completeness of application, the complexity of the proposal and the experience and staffing level of LAFCO.

A. ENVIRONMENTAL JUSTICE CONSIDERATIONS IN INCORPORATIONS

In analyzing the merits of the proposal, LAFCO staff should consider their responsibilities under federal and state civil rights and environmental justice laws. This chapter describes the framework for developing an effective review process which reflects the laws and policies related to civil rights and environmental justice.

Factors that are required to be considered in the review of the proposal and that may have significant civil rights and environmental justice implications include, among other items, population, per capita assessed valuation, the need for organized community services including the present cost and adequacy of existing services and the probably effect of the incorporation on the area and adjacent areas (§ 56668). Further, LAFCO is required to specifically identify the effect of the proposed action on social and economic interests in the proposed new city and the county government structure.

In order for civil rights and environmental justice to be properly considered, OPR recommends that relevant information collected during municipal service reviews as well as other local studies on social and economic indicators in the region be used in considering the incorporation proposal.

In general, federal and state civil rights laws prohibit actions by public entities which disproportionately affect one category of individuals including, but not limited to, race, creed, ethnicity, disability, family status, sexual orientation and income.

Environmental justice is defined in state law as the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies (GC §65040.12(e)).
Environmental justice has particular implications for review of incorporation proposals, as LAFCO will be considering boundaries and service plans that directly address who will be included and who will be excluded from the new city and what impact the inclusion and exclusion will have on the both the residents of the new and the surrounding community including those that may have been historically undeserved and/or environmentally overburdened.

The 2000 amendments to CKH Act also recognize the potential impact of LAFCO decisions on environmental justice. (GC §56001):

"Encourage orderly growth and development which are essential to the social, fiscal, and economic well-being of the state... The Legislature also recognizes that providing housing for persons and families of all incomes is an important factor in promoting orderly development. Therefore, the Legislature further finds and declares that this policy should be effected by the logical formation and modification of the boundaries of local agencies, with a preference granted to accommodating additional growth within, or through the expansion of, the boundaries of those local agencies which can best accommodate and provide necessary governmental services and housing for persons and families of all incomes in the most efficient manner feasible."

Other sections of these guidelines provide guidance on boundaries, service plans and adoption of sphere’s of influence. Appendix H includes additional background on LAFCO’s civil rights and environmental justice responsibilities.

These guidelines include a number of recommendations which encourage broad public participation and incorporation proposal analysis which would affirmatively support the civil rights and environmental justice responsibilities of LAFCO including:

- Educate the public on the role of LAFCOs and the incorporation review process. Appendix A includes a “Primer on Incorporations” that was developed to assist LAFCO with this purpose.
- Adopt general policies and procedures relative to the undertaking of the review of incorporation applications. This will avoid any appearance of an unequal review of some applications.
- Develop and publish a schedule for review and Commission consideration to maximize the ability of the public to participate in the process.
- Convene stakeholders and facilitate collaborative efforts to address issues and challenges that are identified during the early consultation with the proposal proponents which may, ultimately, eliminate the need for the incorporation of a new city.

Consider the impacts of the proposed incorporation across county lines if that would more appropriately address the community of interest.

- Publish the Draft Executive Director’s Report and provide for a 21-day public review period before scheduling the report to be considered by LAFCO.
- Hold meetings and public documents in language other than English, where affected populations are reasonably expected to be non-English speakers.
- Sponsor public workshops prior to the hearing at which the incorporation proposal will be considered.

Staff and Board Training
OPR recommends that LAFCOs provide for ongoing training of staff and board members relative to the application of federal and state civil rights statutes that apply to local government entities.
B. PREPARATION OF THE COMPREHENSIVE FISCAL ANALYSIS (CFA)

The CFA (§56800) is a critical part of LAFCO’s Executive Officer’s report. It includes several legally required components and is usually prepared and processed in a series of sequential steps. Those steps are described in the following sections.

OPR recommends that preparation of the CFA begin after submittal of an application to LAFCO to ensure that multiple versions of the CFA do not have to be prepared. This will help to keep costs and preparation time at a minimum.

As previously mentioned, it is important in the preparation of the CFA to have identified alternative boundary scenarios early in the incorporation process. The early identification of alternative boundaries will allow greater efficiency in the collection and segregation of related costs and revenues. Adding or excluding areas can have a significant impact on the CFA, on revenue neutrality, and on the amount of property tax transfer. The revenue neutrality impact analysis of the CFA should also incorporate alternative boundary scenarios so that any agreement on a revenue neutrality mitigation payment plan can be adjusted to reflect the financial impacts of alternative boundaries.

The CFA must also address revenue neutrality. Incorporations should not occur primarily for financial reasons (§56815) and, under the Cortese-Knox-Hertzberg Act, 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. A suggested process for determining revenue neutrality impacts and mitigation is also described in a subsequent section of these Incorporation Guidelines.

1. Gather Financial and Service Level Data

Existing law requires LAFCO to prepare the CFA (§56800) from data provided by affected public agencies, franchise agencies and the county. Data collection should be coordinated by LAFCO to ensure that it is efficient and cost-effective.

The data collection begins with a data request letter mailed, generally by LAFCO, to all agencies with territory within or currently serving the proposed area of incorporation. The data request letter must also be sent to the county committee on school district organization and each school district within the proposed incorporation boundary. The data request letter should also include a provision that the agency both acknowledge receipt of the letter within 15 days and that it respond to the content of the letter within a specified and reasonable time frame as established by LAFCO’s Executive Officer (§56658(b)). In the case of state agencies needing to provide data, the Executive Officer is encouraged to communicate with the agency to establish a reasonable timeframe.

In the data request letter, the affected agencies should be asked to verify existing levels of service, associated costs, and revenues associated with the provision of service(s) to the proposed incorporation area. This information is used to establish the base year costs and revenues (§56810).
Data used for the CFA must be from the most recent fiscal year for which data are available preceding the issuance of the Certificate of Filing (§56800). When the prior fiscal year data requested by LAFCO is unavailable, the responses to LAFCO’s data request letters and/or the CFA shall document the source and methodology of the data used.

Counties end their fiscal year on June 30th; however, the final financial data may not be available until August or September due to the length of time needed to assemble and prepare the financial information. The Executive Officer’s report and CFA must be completed and heard at a public hearing by LAFCO’s Commission within the same fiscal year or the data must be updated and/or a new CFA prepared. Therefore, the timing of data collection is critical to an incorporation. OPR recommends that data request letters be sent to all agencies and county departments at the start of a fiscal year (July 1) although data may not be available until August or September. Responses should be received by October or November if the CFA and LAFCO Executive Officer’s reports are to be completed during the current fiscal year.

If precise cost figures and levels of service are not available or if the reporting agency does not collect data specific to the proposed incorporation area, the reporting agency must document the source of information and the method used to extrapolate the data. Projected general government costs are frequently based on staffing levels, salaries, and associated costs for cities of similar size. LAFCOs and proponents can use the data gathered from affected agencies to establish a service plan.

2. Establish a Service Plan

The CFA must analyze the fiscal implications of proposed changes in services (§56810).

Cities can provide services through one of two models. A municipality can be a “full-service” city which means that it provides all municipal level services (such as fire, police, garbage collection, water, sewer, etc.) through city employees in departments governed by the city council. Alternatively, a city can be a contract city, providing many of these services through contract(s) with service providers such as special districts, the county or private companies providing contract municipal services. Either model can be successful but has different impacts on data collection and ultimately on the CFA.

To determine which agencies or county service departments must be contacted to provide data, it is necessary to know what services are proposed in the service plan to be transferred to the new city. California cities are required to provide only a limited number of municipal services, including:

- General legislative functions.
- Land use planning and control over land use and development. (May also be provided by means of a contract with other entities such as the county or private firms.)
- Law enforcement (May be provided by means of a contract with other entities).
- Animal control (May also be provided by contract).
- Maintenance of public roads and other public property owned by the city. (May also be provided by means of a contract with other entities such as the county or private firms.)
The agencies, special districts and/or county departments providing these services should receive a data request letter.

The following are services that a city may provide and, if it does, then data needs to be collected to analyze the costs associated with providing these services:

- Fire protection and suppression
- Libraries
- Parks and recreational services
- Street lighting
- Street median maintenance
- Domestic water
- Wastewater treatment and disposal
- Solid waste management
- Flood control
- Social services or community services

Existing law requires any public agency to furnish LAFCO’s Executive Officer with any records or information that are needed for the preparation of the CFA or Executive Officer’s Report (§56658(b)(2)).

OPR recommends that all agencies or departments providing these services be sent data request letters if changes in the provision of services are part of the incorporation proposal.

Time and money can be saved in the data gathering process if LAFCO maintains a consistent schedule for undertaking municipal service reviews.

Exhibit 3 is a hypothetical example of which services might be transferred to a new city and would therefore have to be analyzed as part of the CFA.
### EXHIBIT 3

#### EXAMPLE

**TRANSFER OF SERVICE RESPONSIBILITY**

<table>
<thead>
<tr>
<th>Public Service</th>
<th>Current Provider</th>
<th>Post-Incorporation Provider</th>
<th>Level of Service</th>
<th>Funding Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Animal Control</td>
<td>County</td>
<td>New City (contract with County)</td>
<td>No Change</td>
<td>User Fees, General Fund</td>
</tr>
<tr>
<td>Administrative Services</td>
<td>County</td>
<td>New City</td>
<td>Likely Increase</td>
<td>General Fund</td>
</tr>
<tr>
<td></td>
<td>(§56650-56668.5)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wastewater</td>
<td>Water District</td>
<td>Water District</td>
<td>No Change</td>
<td>User Fees, Property Tax</td>
</tr>
<tr>
<td>Water</td>
<td>Water District</td>
<td>Water District</td>
<td>No Change</td>
<td>User Fees, Property Tax</td>
</tr>
<tr>
<td>Emergency Medical</td>
<td>County Fire District</td>
<td>County Fire District</td>
<td>No Change</td>
<td>User Fees, Fire Fund, Property Tax</td>
</tr>
<tr>
<td>Fire Protection</td>
<td>County Fire District</td>
<td>County Fire District</td>
<td>No Change</td>
<td>Fire Fund</td>
</tr>
<tr>
<td>Drainage/Flood Control</td>
<td>County</td>
<td>New City (local) and County Flood Control District (regional)</td>
<td>No Change</td>
<td>County Flood Control Property Tax, General Fund</td>
</tr>
<tr>
<td>Land Use Regulation</td>
<td>County</td>
<td>New City</td>
<td>No Change (demand-based)</td>
<td>User Fees, General Fund</td>
</tr>
<tr>
<td>Libraries</td>
<td>County Library District</td>
<td>County Library District</td>
<td>No Change</td>
<td>District Property Taxes, Fines and Fees, State Aid</td>
</tr>
<tr>
<td>Building Inspection</td>
<td>County</td>
<td>New City</td>
<td>No Change (demand-based)</td>
<td>User Fees</td>
</tr>
<tr>
<td>Police Protection</td>
<td>County</td>
<td>New City (contract with public agency)</td>
<td>Likely Increase</td>
<td>General Fund</td>
</tr>
<tr>
<td>Trash Collection and Disposal (public)</td>
<td>County (franchise with private firm)</td>
<td>New City (franchise with private firm)</td>
<td>No Change</td>
<td>User Fees</td>
</tr>
<tr>
<td>Road Maintenance, Public Works</td>
<td>County</td>
<td>New City</td>
<td>Likely Increase</td>
<td>Fuel Taxes, General Fund</td>
</tr>
<tr>
<td>Public Transit</td>
<td>County Transportation Authority</td>
<td>County Transportation Authority</td>
<td>No Change</td>
<td>User Fees, Grants, Subventions and Property Taxes</td>
</tr>
<tr>
<td>Parks and Recreation</td>
<td>County Service Area or Community Services District</td>
<td>New City</td>
<td>Likely Increase</td>
<td>User Fees, General Fund</td>
</tr>
<tr>
<td>Street Lighting</td>
<td>County</td>
<td>New City</td>
<td>No Change</td>
<td>General Fund</td>
</tr>
</tbody>
</table>
3. Establish Base Year Costs

Once data gathering is complete, LAFCO will develop an estimate of the base year costs (§56800(a)). Base year costs are the costs to provide municipal level services if the incorporation area had been a city during the base year. The primary examples of identifiable base year costs include law enforcement, animal control, public works administration (not funded by gas tax revenues), code enforcement and the net cost of land use planning and regulation.

Base year costs are used to determine a base year budget as well as the property tax revenue transferring to the new city and ultimately, the new city’s ability to provide adequate municipal services. Base year costs (and revenues) are also used to calculate revenue neutrality (§56810).

When determining base year costs, LAFCO must include all direct and indirect costs associated with the current provision of existing services in the proposed incorporation boundary. These costs should reflect the actual or estimated costs at which the existing level of services could be provided by the proposed city and should include any general fund expenditures necessary to support or subsidize a fee-supported service if the costs of providing the service are not fully recovered through fees.

LAFCO must identify the costs being transferred to the new city that will result in an administrative cost reduction to other agencies. LAFCO should also compare the costs of any existing services to the costs of services provided in cities with similar populations and geographic size that provide a similar level and range of services. This may help to determine a reasonable estimate of the costs expected to be borne by the new city.

Revenues should not be included in the base year budget unless they were realized, received or collected during the base year. Revenues, which were project-specific or are used to cover, either partially or wholly, costs are usually not included. These offsetting revenues might include federal monies used for specific projects. Finally, revenue resulting from development currently under construction is excluded from the base year costs. For example, a new commercial development, which would not go on the tax rolls and did not produce sales tax or user tax revenues until the fiscal year following the base year, would not be included.

4. Calculate Property Tax Transfer

An important component of the CFA is the calculation of the estimated transfer of property tax from the county and any affected special districts to the new city. The property tax transfer calculation results in the county and affected special districts transferring property tax revenues to the new city in proportion to the services responsibilities assumed by the new city.
The Cortese-Knox-Hertzberg Act (§56810) provides a formula by which a share of the property taxes is transferred from the county and special districts to a newly incorporated city. The property tax transfer, or allocation, to the new city is calculated by LAFCO by multiplying the total net cost of transferred services by the Auditor’s ratio, as described below and shown in Exhibit 4, Calculation of Property Tax Transfer. LAFCO determines the total net cost, based on information supplied by the county and other affected local agencies as described during data gathering, of all services to be transferred to the new city.

The total amount of revenue from all sources available for general purposes means the total amount of revenue, which an affected local agency may use on a discretionary basis for any purpose. The total amount of revenue does not include revenue (§56810(a-c)) which, by statute, is required to be used for a special purpose; revenue from fees, charges, or assessments which are levied to specifically offset the cost of particular services and do not exceed the cost reasonably borne in providing these services; and revenue received from the federal government which is required to be used for a specific purpose. Revenues that were project specific or were used to either partially or wholly cover costs for a specific project are also usually not included.

The total net cost is multiplied by the Auditor’s ratio to produce the base property tax allocation, or the amount to be transferred to the new city. The Auditor’s ratio is the ratio of property taxes allocated to the general fund of the county and each affected agency during the prior fiscal year to all revenues received by the county and affected agencies for general purposes during the prior fiscal year. The Auditor-Controller of the affected county determines the ratio.

The Auditor-Controller establishes the ratio each year pursuant to Section 93 of the Revenue and Taxation Code. Auditor-Controllers from different counties may determine the ratio by different methods. LAFCO, the county and the proponents should review the methodology of the Auditor-Controller to determine if the ratio is consistent with existing law and the recommendations of these guidelines. LAFCO’s Commission uses the Auditor’s ratio and the net cost of services to determine the amount of property tax revenue to be transferred to the new city. (See Exhibit 4, Calculation of Property Tax Transfer and Exhibit 5, Example: County Property Tax as a Percentage of Revenue Available for General Purpose.)

The formula used by LAFCO to determine the base property tax transfer as established in Government Code Section 56810 is depicted below.
EXHIBIT 4

EXAMPLE
CALCULATION OF PROPERTY TAX TRANSFER

A. 2000-01 County Cost Estimates

<table>
<thead>
<tr>
<th>Net County Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sheriff Department  $2,929,347</td>
</tr>
<tr>
<td>Animal Control                  74,480</td>
</tr>
<tr>
<td>Code Enforcement                53,829</td>
</tr>
<tr>
<td>Street Lighting                 116,878</td>
</tr>
<tr>
<td>Total Expenditures - General Fund $3,174,534</td>
</tr>
</tbody>
</table>

B. Transfer of Tax Base

| Total Expenditures Subject to Transfer $3,174,534 |
| County Auditor’s Ratio 2000-01 28.84% |
| Property Tax Base Transferred from County $915,560 |

C. Calculation of Tax Allocation Factor (TAF)*

| Assessed Value (FY 2002/2003) $4,051,833,786 |
| Total Property Tax Collected @1% AV 40,518,338 |
| Property Tax Base Transferred from County $915,560 |
| Tax Allocation Factor 2.26% |

*Please note that this is a simplified version of the calculation of TAF. This calculation can be more complex and the tax rate may vary within the new city.
## EXAMPLE

COUNTY PROPERTY TAX AS A PERCENTAGE OF REVENUE AVAILABLE FOR GENERAL PURPOSES

<table>
<thead>
<tr>
<th>Item</th>
<th>2000-01 Revenues</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PROPERTY TAX REVENUE</strong></td>
<td></td>
</tr>
<tr>
<td>Current Secured</td>
<td>$47,064,968</td>
</tr>
<tr>
<td>Current Unsecured</td>
<td>2,489,979</td>
</tr>
<tr>
<td>Prior Unsecured</td>
<td>62,117</td>
</tr>
<tr>
<td>Supplemental - Secured</td>
<td>791,623</td>
</tr>
<tr>
<td>Supplemental - Unsecured</td>
<td>14,107</td>
</tr>
<tr>
<td>Penalties &amp; Cost Delinquencies</td>
<td>3,307,826</td>
</tr>
<tr>
<td>Airplane</td>
<td>210,462</td>
</tr>
<tr>
<td>Timber</td>
<td>95,059</td>
</tr>
<tr>
<td>Racehorse</td>
<td>10,381</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$54,046,522</strong></td>
</tr>
<tr>
<td><strong>OTHER GENERAL PURPOSE REVENUE</strong></td>
<td></td>
</tr>
<tr>
<td>Redemption Fees</td>
<td>$111,446</td>
</tr>
<tr>
<td>Deed Fees</td>
<td>2,870</td>
</tr>
<tr>
<td>Sales Tax</td>
<td>12,409,401</td>
</tr>
<tr>
<td>Property Transfer Fee</td>
<td>1,558,301</td>
</tr>
<tr>
<td>AB 1661 - ERAF</td>
<td>1,457,906</td>
</tr>
<tr>
<td>Franchise Fee</td>
<td>2,514,174</td>
</tr>
<tr>
<td>Interest Income</td>
<td>12,264,030</td>
</tr>
<tr>
<td>Commissions</td>
<td>12,175</td>
</tr>
<tr>
<td>Rental Income</td>
<td>182,969</td>
</tr>
<tr>
<td>Motor Vehicle-In-Lieu</td>
<td>47,845,516</td>
</tr>
<tr>
<td>Other State in-lieu taxes</td>
<td>15,469</td>
</tr>
<tr>
<td>Tobacco Tax</td>
<td>10,453,426</td>
</tr>
<tr>
<td>Homeowners In-Lieu</td>
<td>1,084,732</td>
</tr>
<tr>
<td>Williamson Act</td>
<td>5,813,928</td>
</tr>
<tr>
<td>State Other</td>
<td>2,837,000</td>
</tr>
<tr>
<td><strong>Net Revenue Available for General Purposes</strong></td>
<td><strong>$98,563,343</strong></td>
</tr>
<tr>
<td><strong>TOTAL GENERAL PURPOSE REVENUES</strong></td>
<td><strong>$152,609,865</strong></td>
</tr>
<tr>
<td>Property Tax as % of General Purpose Revenues</td>
<td>36.32%</td>
</tr>
</tbody>
</table>
5. Develop Budget Projections

Using the financial data gathered from agencies providing services during the prior fiscal year, the base year costs/revenues and the property tax transfer as determined by LAFCO, the CFA must include budget projections for the proposed new city \((556800(a-c))\). Budget projections must include:

- The costs to the proposed city of providing services during the three fiscal years following incorporation.
- The revenues of the proposed city during the three fiscal years following incorporation.
- The effects of the costs and revenues on any affected local agency during the three fiscal years following incorporation.
- Any other information needed to make the findings as required for an incorporation proposal.

Existing law requires budget projections for only the first three (3) years after incorporation. However, during the first seven (7) years after incorporation, a city receives some state revenues based on a formula of three (3) times the number of registered voters. After the seventh year, revenues, such as Motor Vehicle In-Lieu fees and State Gas taxes, are subject to a formula based on the actual population of the city. The revenues received during the first seven years after incorporation may represent a significant but impermanent level of funding for any new city. A ten-year projection allows for a more accurate estimate of a new city’s long-term financial feasibility.

Generally, the budget projections should reflect a reasonable cost of living increase or inflationary factors.

A CFA must also include in its budget projections a transition period budget. A transition period is the time between the effective date of the incorporation and the date on which the new city must assume full service responsibility. The effective date is significant because the flow of revenue to the new city is affected by that date. For example, third quarter sales tax revenues are generally not received by a city until the end of the fourth quarter. Please refer to the section site chapter and section on Effective Date for a more complete discussion of this issue.

During the transition period, the new city receives certain revenues but services are still provided by the county. This allows the city time to organize its operations in anticipation of full city-hood. The new city receives certain revenues during this period, such as motor vehicle in-lieu fees and sales taxes that may allow it to create a fund balance to carry over into the first full fiscal year. To make this calculation, the CFA needs to assume an effective date and the length of the transition period. The effective date should be established by LAFCO working with the incorporation proponents.
Finally, the CFA’s budget projections should be presented on a cash basis. New cities must operate on a cash basis since they have no initial fund balances on which to depend for cash flow. Further, the cash basis approach provides a more realistic picture of both the year-end surpluses (or deficits), which will be experienced by the new city. See Appendix G for information on typical sources and uses of municipal funding.

a. Establish Budget Projections: Revenues

The new city’s general fund and special purpose revenues usually come from a variety of revenue sources. A CFA, at a minimum, should provide estimates of revenue from the following revenue sources:

i. Base Property Tax Allocation

As discussed above, the Cortese-Knox-Hertzberg Act provides a formula by which a share of the property taxes is transferred from the county and other affected local agencies to the new city. The process requires LAFCO to determine the total net cost of transferred services based on information supplied by the affected local agencies, during the prior fiscal year. The net cost includes both direct and indirect costs funded by the general fund. The total net cost is multiplied by the Auditor’s ratio. LAFCO uses the Auditor’s ratio and the net cost of transferred services to determine the annual amount of property tax for the new city. The base property tax can increase each year as allowed per statute and by any change of ownership and new development.

Besides establishing the maximum property tax rate, Proposition 13 also limits the rate at which the assessed values of individual properties may increase. Specifically, the assessed value may increase by an annual rate of no more than 2% when held in the same ownership, and is increased to market value at the time of sale. The total property tax collected will increase as property ownership changes and new development takes place.

ii. Special District Property Taxes

Current property tax revenues of certain special districts that are dissolved (see Service Plan) or have territory detached as a result of incorporation would be transferred to the new city upon incorporation. The new city may also receive the current fund balance (reserves) of the affected dependent special district upon dissolution or a proportionate share of the fund balance and service liabilities upon detachment of territory from the district. Redevelopment agencies and Mello-Roos districts may not be affected by incorporations but proponents should work closely with the county and LAFCO to determine any impacts of incorporation on these agencies.

iii. Property Transfer Taxes

The amount of Property Transfer Tax received by the new city will depend upon the level of resale activity and new development within the incorporation area. A conservative annual property turnover rate should be assumed, based upon information from the county, land developers, and/or real estate agents in the area.
iv. Sales Taxes

Upon incorporation, the new city will be eligible to receive a percentage of the sales tax charged on qualifying retail sales from businesses within the proposed incorporation area. The estimated sales revenues should be based on data from the State Board of Equalization.

v. Transient Occupancy Taxes (TOT)

If the proposed incorporation area contains hotels, motels or other facilities that provide short-term and/or overnight accommodations, a similar amount of TOT revenues previously collected by the county can be assumed to be available to the new city to the extent that the new city imposes, at least initially, a similar level of TOT. This data can obtained from the county and is based on the approved TOT rate, average daily room rates, and estimated daily occupancy rates.

vi. State Revenues

Upon incorporation, the new city will be eligible to receive Motor Vehicle In-Lieu Fees and off-highway vehicle license taxes. These revenues are collected by the State’s Department of Motor Vehicles and allocated to cities on a per capita basis. These revenue sources are based on three (3) times the number of registered voters during the first seven years after incorporation. At the beginning of the eighth year, the State will recalculate these revenues based upon the actual population of the city.

vii. Franchise Fees

Upon incorporation, the new city will receive franchise fees currently paid to the county by the affected utilities including gas, electric and cable television providers. Additional franchise fees may also be received from the new city’s solid waste disposal/recycling service if applicable. The estimated annual franchise fees can be obtained directly from the county or utilities during the data-gathering phase of the CFA preparation.

viii. Road Related Revenues

A significant portion of road fund revenues are calculated and allocated to cities on a per capita basis. Similar to other state revenues, road fund revenues are initially based on three times the registered voter population. In the eighth year following incorporation, these revenues would be adjusted to account for the actual population rather than three times the registered voter population. Revenues derived from these gasoline taxes are restricted to use on road maintenance and improvement.

ix. Transportation Related Local Sales Taxes

Voters in many urban counties impose an additional sales tax levy through a ballot measure to fund transportation improvements. Apportionment of these sales tax revenues may be based on a formula using population, miles of public roads and taxable sales.
x. Other Revenues

Estimates for other revenues can be obtained from the county and include land use related, planning, permit and inspection fees, motor vehicle code fines and forfeitures, and other miscellaneous revenues including DMV abandoned vehicle reimbursement, parking fines, non-planning related charges for services, regulatory fees, applicable parcel taxes and assessments, and other charges.

b. Establish Budget Projections: Expenditures

In general, the new city’s level of expenditures will be based on the cost of transferred services currently provided by the county and other local agencies. However existing law does not provide an exact formula for establishing the first year’s expenditures for a new city. Budget projections are based on a series of judgment decisions related to other established cities, past experience and the type and levels of services. In addition, the level of services provided and the type of provider (either the new city or a contract entity) will impact the annual projection of cost. OPR recommends that LAFCO clearly identify the assumptions underlying the projections of costs. These projected costs can also be based on a review of the budgets of similar sized cities. The types of expenditures usually include:

- General governmental administrative functions such as: city manager, city clerk, city attorney, and finance director.
- General governmental administrative operations and facilities such as: telephones, computers, photocopy machines, office space and council meeting location.
- Community development such as land use planning and regulation, permit issuance, and code enforcement.
- Public safety such as law enforcement, fire protection, emergency medical and animal control.
- Public works such as street maintenance and repair, street lighting, landscape and park maintenance, storm drain maintenance and repair, local flood control, and public facility maintenance and repair.
- Community services such as parks, open space, libraries, cultural arts, senior citizens and adult and youth recreation programs.
- Non-departmental costs such as lease/rent for office space, utilities, liability insurance costs, communication and computer expenses, custodial services, and miscellaneous supplies.
- Water and sewer and other utility services.
- Transition year repayment, is the reimbursement to the county for the net cost of services provided during the transition year.

A contingency fund based on a percentage of estimated expenditures should be reflected in the CFA projections to cover unforeseeable expenses. Most cities attempt to reserve a minimum percentage of the operating budget in unappropriated reserves as prudent fiscal policy. OPR recommends that a contingency fund in the range of 10-20% of estimated expenditures be included in the CFA.
THE GANN LIMIT

Proposition 4, the Gann Initiative approved by the California voters in 1979, sets a constitutional appropriations limit on governmental agencies.

The appropriations limit is simply the amount of money that a governmental agency can spend in a fiscal year. The appropriations limit is determined provisionally by LAFCO during the incorporation process.

The voters at the first municipal election held following the first fiscal year after incorporation set a permanent appropriations limit. See Section V. (A.5.c) and Exhibit 6 for an example of the calculation for the Gann limit.

It is important to note that the CFA may show a cumulative funding surplus, but that funding surplus should not be directly identified as an operating reserve. A reasonable unappropriated reserve fund, in addition to a contingency fund, is necessary. Although the preferred level of a reserve fund can vary and should be based on the past experience of comparable new cities, a minimum reserve of at least 10% is recommended. A reserve fund, in addition to a contingency fund, is required because:

- A new city has no historical track record on the cost or level of services required to meet the expectations of the newly incorporated community.
- Unanticipated expenditures could occur due to major disasters, emergencies, liability claims, and litigation settlements.
- Local finances may be subject to changes based on the State’s budget.
- Changing economic conditions could result in a decrease in general fund revenues.
- Funds may have to be budgeted for non-road-related capital improvement projects. As the new city grows in staffing and assumes services from the county and outside contractors, there will be a need for new facilities, vehicles and other major equipment.

**c. Determine An Appropriations Limit**

The next step in preparing the CFA is the determination of an appropriations limit for the proposed city (§56812). LAFCO estimates the amount of revenue anticipated to be received by the new city in its first full year of operations from the “proceeds of taxes.” These are revenues from taxes rather than from fees, assessments or service charges.

The second step is adjusting the amount of the “proceeds of taxes” to reflect an increase in the cost of living and to establish the provisional limit by projecting the second full operating year costs (including the impact of inflation and population changes). The inflation rate is assumed to be based on current accepted cost of living indices with an anticipated percentage population increase. Exhibit 6 depicts a hypothetical example of a calculation of a provisional appropriations limit.

The new city council shall determine the proposed permanent appropriations limit of the city that will be submitted to the voters. This limit is based on the amount of revenue actually received by the new city during the first full fiscal year of operation, adjusted for an increase in the cost of living and population during the next full fiscal year of operation. The permanent appropriations limit of the new city shall be set at the first municipal election, which is held following the first full fiscal year of operation.
EXHIBIT 6

EXAMPLE

DETERMINATION OF PROVISIONAL APPROPRIATIONS LIMIT

Proceeds of Taxes*

Property Tax $1,087,018
Sales Tax 3,094,801
Motor Vehicle In Lieu 2,550,481
Property Transfer Tax 337,118
Section 2105 405,810
Section 2106 291,336
Section 2107 545,469
Section 2107.5 6,000
Transportation Sales Taxes 381,810
Subtotal $8,699,843

Interest Earnings 521,991

Total Proceeds of Taxes $9,221,834
Cost of Living Factor 3.00%
Population Growth 1.90%

Provisional Limit $9,673,703

*These are estimates of revenues anticipated during the first full year of incorporation.
d. Effective Date and Transition Period

LAFCOs must establish an effective date of incorporation. The effective date is the date upon which the new city is deemed organized or incorporated. During the period between the incorporation election and the effective date, the new city does not have legal standing but the newly elected city council can meet as a city council-elect. These meetings are primarily focused on getting organized for the effective date of incorporation. Activities usually include preparing the required legal documents to be adopted by the new city council on its effective date, securing a location to conduct city business and hold city council meetings, hiring of key interim staff, securing of interim insurance coverage and other administrative activities.

All city council-elect meetings are subject to the Ralph M. Brown Act. The legislative intent of the Brown Act is that public agencies conduct their business and make their decisions in open public meetings. Each board, commission, committee, or other body of a local agency created by charter, resolution or formal action of a legislative body is a legislative body itself and is covered by the requirements of the Brown Act. This includes the city council of a newly incorporated city.

On the effective date set by LAFCO (and following a positive vote in the election), the new city council begins to organize the new city’s administrative structure at its first meeting by adopting the existing ordinances of the county. These ordinances will remain in full force for at least 120 days following incorporation or until the new city council adopts ordinances superseding the county ordinances, whichever occurs first.

Under State law, the new city does not assume direct responsibility for providing services during the transition period between the effective date of incorporation and July 1 following the effective date. The county and other affected agencies continue to provide municipal level services during the transition period while the new city prepares to take over this responsibility.

Following the transition period, the new city must provide the services that it is authorized to provide. The responsibility for police protection, accident investigation, animal control, land use planning, building and safety, and public streets, among other services, are transferred from the county and other affected agencies to the new city. The new city is then operational in all respects.

To ensure equity between costs and revenues for the county during the transition period, the county can request reimbursement for the net cost of services provided during the transition period (§57384). If the county requests reimbursement, LAFCO is required to impose it as a term of approval. The new city has up to five years to reimburse the county for the net cost, unless waived by the county (See Exhibit 7, Calculation of Repayment To County).
EXHIBIT 7

EXAMPLE
CALCULATION OF REPAYMENT TO COUNTY

A. Expenditures

Sheriff Department $3,200,977
Animal Control 90,269
Code Enforcement 58,821
Street Lighting 123,996
Gross Cost of Transition Year Services 3,474,062

B. Revenues

Property Tax $915,560
Sales Tax 758,530
Franchise Fees 51,483
Fines and Forfeitures 11,300
Less Transition Year Revenues Received by County 1,736,872

C. Net Transition Repayment Amount 1,737,190

D. Annual Repayment for Five Years $347,438
($1,737,190 ÷ 5)
WAYS TO ACHIEVE REVENUE NEUTRALITY

A broad range of mitigation measures to achieve revenue neutrality is permitted. These may include tax sharing agreements, lump-sum payments, payments over a fixed period of time, modification of incorporation boundaries or any other terms which are acceptable to all the parties involved. Less than substantially equal exchange of revenues and expenditures is also possible if the county and affected agencies agree to it.

**Government Code Section 56810** defines net cost of services as:

- The total direct and indirect expenses to the county of providing services;
- Adjusted by any subsequent change in the Consumer Price Index, and
- Less any revenues, which the county retains, that was generated from the formerly unincorporated territory during the period of time the services were provided by the county.

**e. Financial Feasibility**

LAFCO must make a determination that the proposed city is expected to receive revenues sufficient to provide public services and facilities and ensure reasonable reserves during the three fiscal years following incorporation. Although it is assumed that it is the intention of all new cities to improve services, feasibility is best determined by comparing existing costs, revenues and levels of service to those expected after incorporation.

One of the key issues weighed in the evaluation of incorporation is the proposed city’s fiscal feasibility and its impact on neighboring cities and communities. “Feasible” is broadly defined under the Cortese-Knox-Hertzberg Act as capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, legal, social and technological factors (§56038.5).

**C. Revenue Neutrality**

In 1992, the State enacted legislation designed to reduce the negative fiscal impact incorporations can have on counties and other affected agencies, termed “revenue neutrality.” Under the revenue neutrality law (§56815) LAFCO cannot approve a proposal for incorporation unless it finds that the amount of revenues the new city receives from the county and affected agencies after incorporation would be substantially equal to the amount of savings the county or the affected agencies would attain from no longer providing services to the proposed incorporation area. A broad range of mitigation measures is permitted as is a less-than-substantially equal exchange if the county and affected agencies agree to the transaction.

**1. Background**

During the 1980s, unincorporated communities with high levels of revenue through sales tax and property tax were usually the first to successfully incorporate in the Post Proposition 13 period. Because sales and property taxes are generated on a geographic or situs basis, while municipal and countywide (regional) services are provided on an as-needed basis, it was possible to “capture” sales and property taxes by incorporating high tax generators into a new city. Doing so, however, deprived counties of necessary tax revenues, which, prior to the incorporation, had been available to pay for countywide services.
After Proposition 13, local agencies could no longer alter the property tax rate to compensate for lost revenue when a new city incorporated and started receiving sales and other tax revenue. Other communities in the unincorporated area who had relied on the county to provide municipal level services found their revenue sources reduced. Counties, facing revenue losses due to the incorporation, were forced to reduce services simply because there were no practical alternatives such as raising additional revenue.

The revenue neutrality law was an attempt to make the tax allocation more equitable by requiring LAFCO to ensure that counties and districts are held harmless from new incorporations. Counties have dual responsibilities for services. The County is the provider of law enforcement services in the unincorporated area. It often provides fire protection as well. Additionally, it is the county that provides for the rest of the criminal justice system to all county residents—services such as the District Attorney, correctional facilities, Probation, and Public Defender. In addition, the social services and public health care systems are almost exclusively provided by counties. These services are provided regardless of where people live and are funded by the same revenue stream that previously could be diverted to an incorporating city. Revenue neutrality has generally removed the financial incentive for communities to incorporate as counties do not lose more revenues over and above the costs associated with services to be transferred. However, counties may still have strong financial incentive to facilitate incorporations especially if there is strong citizen sentiment to create the new city, the county’s financial base is assured, and the county may avoid the long-term costs of providing municipal level services to rapidly developing communities.

The incorporation of a new city usually requires additional expenditures for executive staff and governance cost for which there is no transfer of revenue from the county or district. Additional revenues that are provided to new cities by the State may offset some of these costs. Over time, the new city will be able to make land use decisions, reorder fiscal priorities and otherwise influence the future revenue streams of the city.

Incorporations that have occurred since the passage of the revenue neutral provisions have generally resulted in additional revenues or terms that are designed to facilitate the new city’s fiscal health, particularly in the first years following the incorporation.

### 2. Revenue Neutrality Process

The revenue neutral standard in law (§56815(a)) is: "that any proposal that includes an incorporation should result in a similar exchange of both revenue and responsibility for service delivery among the county, the proposed city and other subject agencies". Section 56815(b) prohibits LAFCO’s approval of an incorporation proposal unless it finds that revenues and expenditures are "substantially equal". Section 56815 thus favors neither the new city nor the county or district. Section 56815(c)(1) does provide authority for LAFCO to approve a proposal that is not revenue neutral if both (all) parties agree to the proposal’s fiscal effects.
A revenue neutral process, conducted as a part of an incorporation proceeding, should serve to bring the parties affected by the incorporation proposal together for the purpose of reaching a mitigation agreement (if required) that all parties can endorse and will serve as the factual basis for the findings required by §56815. Even if agreement among the parties regarding fiscal mitigation cannot be reached, the process will still provide the factual basis for the development of potential mitigation measures that may be imposed by the Commission. Refer to Exhibit 8 for an illustration of a Typical Revenue Neutrality Negotiation Process.

The purpose and intent of the revenue neutral policy is to:

- Prescribe the process for data collection, analysis and discussion of the elements that must be included in a revenue neutral transaction.
- Assist participants in the process to develop proposed terms and conditions that will meet the standards prescribed in the law and enable LAFCO to make the necessary findings.
- Help the parties to reach a revenue neutrality agreement through a rational and predictable process by facilitating the gathering of information from affected parties or fiscal consultants, providing a forum for negotiations, and guiding LAFCO staff when serving as an intermediary to resolve conflicts in the negotiations.
- Develop a basis for a default revenue neutral finding/agreement if one is not forthcoming in the negotiation process.

OPR recommends LAFCOs develop policies for the purpose of implementing revenue neutrality requirements (§56815). The following process is suggested for determining and resolving the issue of revenue neutrality. It is intended to be a model only; individual LAFCOs should either adopt this policy or a revenue neutrality process tailored to unique local conditions. All revenue neutrality policies should be reviewed by legal counsel to ensure compliance with existing law and to ensure that any terms and conditions are legally enforceable.
EXHIBIT 8
EXAMPLE
TYPICAL REVENUE NEUTRALITY NEGOTIATION PROCESS

Incorporation Petition Filed

Review Departmental Costs & Revenues Provided by the County, LAFCO Staff Reviews & Agrees or Amends

Initiate Comprehensive Fiscal Analysis

Draft Comprehensive Fiscal Analysis

Convene Revenue Neutrality Committee for Negotiations

No Agreement

Agreement

Board of Supervisors & Chief Petitioners Adopt Agreement

LAFCO Staff Drafts Revenue Neutrality Proposal

Public Hearing Draft Comprehensive Fiscal Analysis

LAFCO Staff Drafts Terms & Conditions, Staff Report & Recommendations

LAFCO Hearing
a. General Requirements for Revenue Neutrality

Any proposal that includes incorporation should provide for a similar exchange of both revenue and responsibility for service delivery among the county, the proposed city, and other affected agencies. LAFCO may not approve a proposal that includes an incorporation unless it finds that the following two quantities are substantially equal §56815(b):

- Revenues currently received by the local agency transferring the affected territory that, but for the operation of revenue neutrality, would accrue to the local agency receiving the affected territory,
- Expenditures, including direct and indirect expenditures, currently made by the local agency transferring the affected territory for those services that will be assumed by the local agency receiving the affected territory.

LAFCO may approve a proposal that includes an incorporation if it finds either of the following:

- The county and all of the subject agencies agree to the proposed transfer (§56815(c)), or
- The negative fiscal effect has been adequately mitigated by tax sharing agreements, lump-sum payments, payments over a fixed period of time, or any other terms and conditions pursuant to §56886.

The terms of a revenue neutrality agreement must be negotiated between the proponents, county and special district officials in accordance with a policy adopted by the local LAFCO. The agreement may be in the form of revenue sharing, lump sum payments, payments over a fixed period of time, or any other term and condition (§56815(c)(2)).

Revenue neutrality negotiations are initiated during the preparation of the CFA. After the preliminary results of the CFA are compiled, the county, proponents and LAFCO use the information to structure payments for revenue neutrality. The negotiated terms of the agreement are then used to create the public hearing draft of the CFA for consideration by LAFCO during the public hearing on incorporation.

b. Method of Calculation

The calculation of revenue neutrality should be based on the following standards (see Exhibit 9, Calculation of Revenue Neutrality Payment) and agreements should be negotiated pursuant to the following policies:

- Revenue neutrality agreements should 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. Generally, anticipated or projected revenue growth should not be included.
- Expenditures for services transferred to a new city should be evaluated on a “net cost” basis. 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 nonrecurring costs and should not be included in the calculation.

• Countywide costs for regional services and administrative functions including Chief Administrative Officer, Clerk of the Board, Auditor-Controller, Board of Supervisors and other 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 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 could pay a portion of its annual revenue neutrality payment with restricted funds if both agencies agree and a legally enforceable mechanism for payment can be created.
EXHIBIT 9

EXAMPLE

CALCULATION OF REVENUE NEUTRALITY PAYMENT

REVENUE NEUTRALITY - GENERAL FUND

Revenues Transferred

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property Taxes</td>
<td>$915,560</td>
</tr>
<tr>
<td>Sales Tax</td>
<td>2,916,300</td>
</tr>
<tr>
<td>Real Property Transfer Tax</td>
<td>111,425</td>
</tr>
<tr>
<td>Franchise Fees</td>
<td>582,339</td>
</tr>
<tr>
<td><strong>Total Revenues Transferred</strong></td>
<td><strong>$4,525,624</strong></td>
</tr>
</tbody>
</table>

Expenses (Net of Rev. Offsets)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sheriff Department</td>
<td>$2,929,347</td>
</tr>
<tr>
<td>Animal Control</td>
<td>74,480</td>
</tr>
<tr>
<td>Code Enforcement</td>
<td>53,829</td>
</tr>
<tr>
<td>Street Lighting</td>
<td>116,878</td>
</tr>
<tr>
<td><strong>Total Expenses Transferred</strong></td>
<td><strong>$3,174,534</strong></td>
</tr>
</tbody>
</table>

Additional Future Revenues to County

- (Property Tax Administration Fees, .25%) = 2,289

County Surplus or (Deficit)

- ($1,348,800)
c. Negotiation Process

The role of LAFCO staff in the revenue neutrality process is to facilitate discussions and to ensure compliance with the revenue neutrality requirements.

After completion of the Draft CFA, LAFCO staff should convene a revenue neutrality negotiating committee composed of representatives of the county, other affected agencies and the proponents of the proposed incorporation during preparation of the CFA. The role of the revenue neutrality committee is to develop a mitigation agreement.

Due to the schedule of most incorporations, it is recommended that the revenue neutrality committee complete negotiation of the agreement within 90 days; however, this should remain flexible as long as the schedule and progress toward an agreement is being maintained. At the conclusion of the negotiating period, LAFCO’s Executive Officer will certify that an agreement has been reached or has not been reached.

If an agreement is reached, ratification will be by resolution of the County Board of Supervisors and by letter from the incorporation proponents. The documents demonstrating an agreement to the provisions should be returned to LAFCO staff for inclusion in the comprehensive fiscal analysis, staff report and recommendations to be presented at the public hearing. The terms of the revenue neutrality agreement will also be included as terms and conditions in LAFCO’s resolution, if the incorporation is approved. Revenue neutrality agreements should include a description of methodology and assumptions underlying the terms of the agreement.

It is recommended that agreements which involve revenue neutrality mitigation payments should establish terms based on the following agreed upon provisions:

- The annual net revenue loss to the county and other affected agencies resulting from the proposed incorporation.
- The duration of mitigation payments.
- The cumulative revenue neutrality impact based on the annual net revenue loss and the duration of the mitigation payments, including annual inflationary factors and discount rates if applied.
- The specific annual mitigation amount to be paid by the new city, including the annual payment amount, and variations to reflect cash flow, expenditure levels and other agreed upon variables.
- In instances in which the revenue neutrality agreement requires tax sharing between the new city and the county, payment should be effected as directly from the revenue source as permitted by State law.
The effective date of incorporation and the anticipated lead-time for receipt of revenues can also 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.

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.

If the negotiating parties do not reach agreement, the status of the negotiations should be referred to LAFCO for discussion of outstanding issues at the first available meeting as determined by the Executive Officer. If revenue neutrality issues are not resolved, OPR recommends that LAFCO staff draft proposed terms and conditions dictating revenue neutrality terms for use in the comprehensive fiscal analysis and for recommendation to LAFCO at its public hearing.

d. 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 by law (§56815).

The term of mitigation payments may be either ongoing or limited to a specific number of years. Revenue neutrality agreements that provide for ongoing payments may provide for the permanent sharing of revenues between the new city and affected agencies if agreed to by the parties involved and if a means of adjustment after incorporation is included. Any terms and conditions that mitigate the negative fiscal effect of a proposal that contains incorporation shall be included in LAFCO’s resolution.

D. INTEGRATING CEQA WITH THE INCORPORATION PROCESS

The Public Resources Code, §21000 et sequitur, also known as the California Environmental Quality Act (CEQA), requires public agencies to evaluate the potential environmental effects of their actions. Only discretionary actions that are defined as projects are subject to CEQA. A project is the whole of an action that has the potential for resulting in either a direct physical change to the environment, or a reasonably foreseeable indirect physical change to the environment (CEQA Guidelines §15378). CEQA’s procedural requirements encourage citizen participation in the environmental review process.

Incorporations are projects subject to CEQA and require environmental review (CEQA Guidelines §15378). LAFCO, as the lead agency for the environmental review, must prepare the required documentation and may charge the incorporation proponent (the applicant) fees to cover costs. The environmental documentation must address the possible environmental impacts resulting from the incorporation but does not need to speculate on impacts which may result from unknown future city council actions.

The timing of the environmental review is critical to incorporation and should be started as soon as possible after submittal of the incorporation application. The environmental review process must be completed before LAFCO can make a final decision on an incorporation proposal.
LAFCO may make one of three environmental determinations with respect to the potential environmental effects of an incorporation. The project may qualify for an exemption from CEQA, which requires no further analysis. If an exemption is not appropriate, LAFCO should prepare an Initial Study to determine whether a Negative Declaration or an Environmental Impact Report (EIR) must be prepared (CEQA Guidelines §15063). If the project will not result in potentially significant environmental effects, LAFCO may prepare a Negative Declaration. If the project has the potential to result in one or more significant environmental effects, an EIR must be prepared. These three basic determinations are described in more detail below:

- The incorporation is exempt under §15320 of the CEQA Guidelines. A notice of exemption should be filed with the County Clerk upon approval of the incorporation.

- The incorporation does not have the potential to result in significant environmental impacts, based on an initial study. If an initial study shows no substantial evidence that the project may result in significant adverse environmental impacts, LAFCO may prepare and adopt a negative declaration. A notice of determination must be filed with the County Clerk upon adoption of the negative declaration and approval of the incorporation. (CEQA Guidelines Section 15075)

- The incorporation has the potential to result in significant environmental impacts, based on an initial study. If the initial study shows substantial evidence that the project may result in significant adverse environmental impacts, the preparation of an environmental impact report (EIR) is required. A notice of determination must be filed with the County Clerk upon certification of the final EIR and approval of the incorporation. (CEQA Guidelines Section 15094)

LAFCO’s environmental determination must be based on the description of the proposed action. Therefore, the “project description” or the description of the proposed incorporation will be important in determining whether the incorporation may have a significant effect on the environment. Characteristics of a project that may lead to significant environmental effects include:

- The project may lead to a direct physical change in the environment, such as dust, noise, odors or traffic resulting from construction and operation of facilities.

- The project may lead to indirect physical change in the environment which is not immediately related to the project but which is caused indirectly by the project, such as new population growth or air pollution associated with new population growth.

If it is determined that an EIR is required, the EIR must discuss possible mitigation measures and alternatives to the proposed project, as means of reducing the potential significant impacts of the proposed incorporation. Therefore, LAFCOs should be prepared to consider alternatives to the proposed incorporation boundaries as one possible type of project alternative. This is consistent with LAFCO’s responsibility to consider alternative incorporation boundaries for other reasons (see Section IV.B.).
CEQA review can add time and cost to the incorporation process. The CEQA statute permits public agencies to recover costs of CEQA review through fees charged to the project proponents/applicant. The cost and time for processing a CEQA exemption is negligible. The cost of preparing a Negative Declaration can range from a few hundred dollars to a few thousand dollars depending on whether mitigation measures must be developed to completely eliminate significant effects. A typical Negative Declaration can require up to three to six months to process. When an EIR is required for a project, preparation and processing time can be up to a year and costs are difficult to estimate but can be tens of thousands of dollars.

E. EXECUTIVE OFFICER’S REPORT AND RECOMMENDATION

LAFCO’s Executive Officer is required to review the application and prepare a final report on the incorporation application with recommendations to approve or disapprove the incorporation (§56665).

1. Contents of Report

The Executive Officer’s report must address, but not be limited to, the following sections:

- Factors which were considered in the review of the proposal (§56668).
- Incorporation Boundaries-- may also establish a sphere of influence.
- Plan for Services.
- Comprehensive Fiscal Analysis.
- Terms and Conditions.
- Recommended findings.
- Recommended determinations.

LAFCO must specify the terms and conditions which result from the revenue neutrality negotiations (§56886) and other special circumstances. These terms and conditions may include, but are not limited to, the following:

- Continuation of services following incorporation.
- Payments and taxes required by changes in service responsibilities or for revenue neutrality.
- Disposition of money, property and rights of use, such as water or utility capacity rights.
- Disposition of special district responsibilities, district governing boards and employees.
- The effective date of incorporation.
2. Distributing the Report

Existing law states that the Executive Officer’s report must be completed and distributed not less than five (5) days prior to the date of LAFCO’s commission’s hearing (§56665). However, this is the minimum amount of time the Executive Officer’s report must be made available. OPR recommends that the Executive Officer’s report be made available at the same time the notice of public hearing is published (§56154) or 21 days before the hearing.

The Executive Officer is required to notify all interested parties that the incorporation report 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 proponents and all persons who have filed a written request for notification (§56150 and §56160). The notice shall specify the locations where the report can be reviewed and the time period in which the State Controller’s review can be requested.

3. State Controller Review of CFA

Any interested person or agency may request a review of the CFA by the Office of the State Controller. This request must be made within 30 days from the date that LAFCO’s Executive Officer provides notice that the Executive Officer’s report is complete and available for public review (§56801). The request by an interested person or agency must specify, in writing, any element of the comprehensive fiscal analysis that the State Controller is requested to review and the reasons the State Controller is requested to review each element.

LAFCO’s Executive Officer should, in consultation with the State Controller’s office, prepare an estimate of the cost of the review and deliver the estimate to the requesting individual or agency. This estimate should include the charges by the State Controller, LAFCO staff costs, and costs for any consultants required to assist the State Controller with the review. The individual or agency requesting the review will be asked to deposit the estimated cost of the analysis with LAFCO’s Executive Officer.

After a request for review has been made and the appropriate deposit has been submitted to LAFCO, the Executive Officer shall contract with the State Controller for review of the CFA. The contract should specify the elements to be reviewed and the estimated cost of the review. Prior to executing the contract, the parties requesting the review must deposit with LAFCO’s Executive Officer, the total estimated cost of conducting the review. If the State Controller identifies a need for an additional deposit prior to executing the contract, the party or parties requesting the review shall be notified and will be responsible for depositing the additional amount with LAFCO’s Executive Officer. The State Controller will not proceed with the review until sufficient funds are deposited to cover all costs.

Within 45 days of receiving the CFA (§56801(c)), the State Controller is required to issue a report to LAFCO’s Executive Officer regarding the accuracy and reliability of the information, methodologies, and documentation in the CFA. Time limits imposed upon LAFCO by the Cortese-Knox-Hertzberg Act shall be tolled while the State Controller conducts its review and prepares its report.
VI. COMMISSION HEARING AND DECISION

When an application for incorporation is deemed complete, LAFCO’s Executive Officer will issue a certificate of filing, with a copy to the proponents’ (§56651), specifying the date of LAFCO’s hearing on the proposal. The public hearing must be set within 90 days of the issuance of the certificate of filing.

A. HEARING NOTICE

All meetings must meet the legal requirements for public notice. Notice of the hearing must be sent to the proponents, the county, affected agencies and those requesting a mailed notice in writing. Notice must also be given in all the following ways:

- Notice given in electronic format on LAFCO’s website (§56150); and
- Notice posted on or near the doors of the meeting room (§56158) at least 21 days prior to the date of the hearing (§56159); and
- Notice published in one or more newspapers of general circulation (§56153) at least 21 days prior to the date of the hearing (§56154); and
- Notice mailed to affected and interested parties at least 21 days prior to the date of the hearing (§56156 and §56157).

To the extent a proposed incorporation becomes controversial, multiple public hearings may need to be held. OPR recommends that LAFCOs hold at least one public hearing in the community proposing incorporation to allow residents a convenient opportunity to provide input.

LAFCO’s hearing may be continued but may not be postponed more than 70 days from the date specified in the original public hearing notice. Prior to any continuance of the incorporation hearing, LAFCO must give the proponents an opportunity to address any potential impacts or hardships on the incorporation effort that may result from a delay. The Commission is required to consider the potential impacts on the incorporation proponents prior to making a decision on the duration of any continuance (§56666(c)).

B. CONFLICTING PROPOSALS

If two or more incorporation proposals pending before LAFCO conflict or are in any way inconsistent with one another (as determined by LAFCO), LAFCO may determine the relative priority for hearing the proposals (§56655). However, in the absence of a determination by LAFCO, priority is given to the proposal first filed with LAFCO.
C. COMMISSION ACTIONS

At the conclusion of the public hearing, but no later than 35 days after the hearing, LAFCO is required to adopt a resolution that states LAFCO’s determination on the incorporation proposal. LAFCO may approve, approve with conditions or disapprove the plan for incorporation (§56880).

When considering an incorporation proposal, LAFCO is required to consider the following factors (§56688):

- The population, population density, and potential for growth.
- The need for organized community services, and effect on adequacy of services.
- The effect of the proposal on adjacent areas and local government structure.
- The conformity of the proposal with adopted LAFCO policies and priorities.
- The effect of the proposal on integrity of agricultural lands.
- The definiteness and certainty of the proposed physical boundaries.
- Consistency with county General Plan and specific plans.
- The sphere of influence of any affected local agency.
- The comments of any affected agency.
- The ability of the new city to provide services, including sufficiency of revenues.
- Timely availability of adequate water supplies.
- The extent to which the proposal helps achieve its allocation of regional housing needs.
- Comments from land owners.
- Any information relating to existing land use designations.

Incorporation proposals which would result in certain conditions are prohibited by law, including incorporations which would result in unincorporated islands (§56744) and annexation of land within a Farmland Security Zone (see exceptions, (§56749).

If LAFCO approves or conditionally approves the proposal, the resolution must contain certain information including (§557100):

- A statement of the type of change of organization or reorganization being acted on.
- A description of the exterior boundaries of the territory for each change of organization or reorganization approved by the commission.
- The name or names of any new or consolidated city or district.
- All of the terms and conditions upon the change of organization or reorganization approved by the Commission.
- The reasons for the change of organization or reorganization.
• A statement as to whether the regular county assessment roll or another assessment roll will be utilized.

• A statement that the affected territory will or will not be taxed for existing general bond indebtedness of any agency.

• Any other matters that the Commission deems material.

If LAFCO approves or conditionally approves the proposal, the resolution must also contain certain findings (§56720 and §56815) including:

• The proposed incorporation is consistent with the intent of the Cortese-Knox-Hertzberg Act (see Exhibit 10).

• The Commission has reviewed the spheres of influence of the affected local agencies and the incorporation is consistent with those spheres of influence.

• The Commission has reviewed the CFA and State Controller’s Report, if any.

• The Commission has reviewed the Executive Officer’s report and recommendation and the testimony presented at its public hearing.

• The proposed city is expected to receive revenues sufficient to provide public services and facilities and a reasonable reserve during the three fiscal years following incorporation.

Finally, if LAFCO approves or conditionally approves the proposal, the resolution must also do the following (§56881):

• Make the findings and determinations pursuant to §56375 including the determination of property tax revenue to be exchanged by the affected local agencies.

• Determine that public service costs are likely to be less than or substantially similar to the costs of alternative means of providing the service (only applies if the incorporation proposal was initiated by the Commission pursuant to §56375 [a]).

• Determine that the proposal promotes public access and accountability for community services needs and financial resources (only applies if the incorporation proposal was initiated by the Commission pursuant to §56375 [a]).

• Assign a temporary name, if no name has otherwise been assigned to the affected territory.

• Initiate protest proceedings (see Section VII below).

After the Commission takes action, the Executive Officer must mail a copy of the resolution to the proponents and to each affected local agency whose boundaries would be changed by the proposal. Clerical errors or mistakes in the resolution may be corrected by the Executive Officer without Commission action (§56883).

If the proposal is denied, no similar proposal for incorporation involving the same or substantially the same area shall be initiated for at least one year after the date of adoption of the resolution terminating proceedings (§56884). However, the Commission has the authority to waive this restriction if found to be detrimental to the public interest.
EXHIBIT 10

IMPACT OF THE 2000 AMENDMENTS ON FINDINGS OF CONSISTENCY

When a LAFCO considers an application for incorporation, LAFCO must make a number of findings (§56720), including that the proposed incorporation is consistent the intent of the Cortese-Knox-Hertzberg Act.

Amendments to the Act in 2000 (AB 2838, Chapter 761, Statutes of 2000) have modified and strengthened the link between approval of proposed incorporations and orderly development. AB 2838 added more specificity to the purpose of the Act by amending several intent and procedural sections including Government Code Sections 56001, 56301 and 56300.

MORE DEFINITION TO ORDERLY GROWTH AND THE ROLE OF LAFCO

While promoting orderly development has always been a fundamental purpose of LAFCO, the 2000 amendments added emphasis by stating that: the provision of affordable housing, discouraging sprawl, preserving open space and prime agricultural lands and efficiently extending government services are all important elements of promoting orderly development.

Further, the 2000 amendments included provisions that state that a preference should be granted to accommodating additional growth within or through the expansion of the boundaries of those agencies which can best accommodate and provide necessary governmental services and housing to persons and families of all incomes.

Historically, the impact of a proposed incorporation on the future development of housing affordable to lower income households did not necessarily come into question when a LAFCO was considering an application for incorporation.

The support for protecting prime agricultural lands was also enhanced in the 2000 amendments through the inclusion of language which states that one of the purposes of LAFCO is to preserve prime agricultural lands (56301).

The Act still directs LAFCO to guide development away from existing prime agricultural lands unless the development would promote the planned, orderly efficient development of the area (556377). In practice, this could mean that once one farm was converted to residential or commercial purposes other adjacent or nearby areas could also be included in incorporation proposals with the clear intent that ultimately these lands would very likely be converted to non-agricultural uses.

Although the 2000 amendments did not change 556377, the new purpose and intent language emphasizes the responsibility of LAFCO to consider the preservation of prime agricultural land.

WRITTEN POLICIES

The 2000 amendments also require LAFCO to establish written policies and procedures that encourage and provide planned and well-ordered, efficient urban development patterns. Prior to these amendments, LAFCO was only directed to establish policies with no requirement that they be written or be implemented through specific procedures. This new requirement for written policies and accompanying procedures may challenge some LAFCOs as it will take some consensus building to draft and adopt language which a Commission can support.

OPR recommends that LAFCOs do not postpone the review and adoption of its policies and procedures on incorporations until a proposal is before the Commission. Fair and equitable procedures are best developed in the absence of a specific application. A LAFCO may want to review the incorporation policies and procedures of other LAFCOs as part of its consideration and approval process.

IMPACT OF 2000 AMENDMENTS

The requirement for written policies and procedures coupled with the changes to the purposes of LAFCO and definition of orderly growth will impact the deliberative process of the Commission. In some cases, the Executive Officer’s report will be more extensive than the Commission may have previously seen.

Findings of consistency of the proposed incorporation with the adopted policies and procedures will also increase the areas in which LAFCO’s decision is open to legal challenge. The Commission, in the exercise of its legislative authority is generally protected from challenges related to the specific content of the decision. Commissions are however, open to procedural challenges. To the extent that a LAFCO previously operated under unwritten policies and procedures, LAFCO will now be evaluated on how well it follows its own process.
D. REQUEST FOR RECONSIDERATION

Any person or affected agency may file a written request with LAFCO’s Executive Officer requesting reconsideration of any resolution approving incorporation. The request must comply with the provisions of §56895 and policies adopted by LAFCO. There may be a fee for filing the reconsideration request.

The request must state the specific change requested and what new or different facts or applicable new law warrant the reconsideration. The request must be filed within 30 days of the adoption of a resolution by LAFCO.

If LAFCO receives a request for reconsideration, it shall not take any further action on the incorporation proposal until LAFCO Commission acts on the request. The Executive Officer must place the request on the agenda of the next LAFCO hearing for which public notice can be provided, to receive oral and written testimony. The hearing may be continued from time to time but the continuance shall not exceed 35 days from the date in the original public hearing notice. The person or agency that filed the request may withdraw it at any time prior to the conclusion of LAFCO’s hearing.

At the conclusion of its consideration, LAFCO Commission may approve or disapprove with or without amendment, wholly, partially, or conditionally, the request. The determination of LAFCO is final and conclusive. No person or agency shall make any further request for the same change or a substantially similar change, as determined by LAFCO.

VII. CONDUCTING THE PROTEST HEARING

A conducting authority has the responsibility to hold a public hearing to count protests received for an incorporation proposal. LAFCO is designated by law as the “conducting authority” for city incorporations. LAFCO Commission may delegate its conducting authority function to LAFCO’s Executive Officer (§57000(c)).

Within 35 days following the adoption of the Commission’s resolution of approval and reconsideration period (§57002), LAFCO must issue a “Notice of Hearing” scheduling the date for the conducting authority protest hearing on the incorporation. The notice must be provided in all of the following three ways (§57025):

1) Publication in a newspaper of general circulation in the incorporating area (§56153). The publication must occur at least 21 days prior to the hearing date (§56154).

2) Posting of a notice on or near the doors of the meeting room or on any official bulletin board (§56158). The notice must be posted at least 21 days prior to the hearing (§56159).

3) Direct mailing to each affected city, county, district, proponents, landowners and to persons requesting special notice. The mailed notice must be sent by first class and deposited in the US mail at least 21 days prior to the hearing date (§56155 and §56157).
The purpose of the hearing is to collect and count written protest from registered voters within the incorporating area. LAFCO, acting as the conducting authority, does not have the discretion to modify the incorporation proposal or to terminate incorporation proceedings without sufficient protest being recorded. LAFCO’s conducting authority hearing may be continued for up to 60 days.

Within 30 days of the conclusion of the hearing, the Commission shall make a finding regarding the value of the written protests and take one of the following actions (§57077):

- Terminate the proceedings if a majority protest exists (§57078); or
- Call an election on the question of incorporation if there is no majority protest.

Following the protest determination, the County Registrar of Voters begins the process of preparing the incorporation for a vote at the next general election unless a special election is requested and approved by LAFCO. If proceedings are terminated by majority protest, 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). However, the Commission may waive this restriction if found to be detrimental to the public interest.

**VIII. VOTING: THE INCORPORATION ELECTION**

Elections for incorporation are usually placed on the ballot of the next general election. Incorporation elections are considered county elections for the purpose of administering the Election Code and the Political Reform Act. 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 (§57150(b)). In the event the issue fails, the county absorbs the election costs.

LAFCO’s Executive Officer must draft an impartial analysis (§56898) of the incorporation issue for inclusion in the incorporation ballot. The Commission may review the text of the impartial analysis and approve or modify it, if the Commission has instituted a review procedure. 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.

Existing law specifies how the ballot language is required to be stated beginning with Government Code §57133 including identification of terms and conditions which may have the effect of imposing or increasing liability for payment of taxes, assessments or service charges.

**IX. CERTIFYING THE ELECTION RESULTS**

Following an incorporation election, the County Board of Supervisors is required to certify the election results by adoption of a resolution and must forward a copy to LAFCO. If the election approves the incorporation, LAFCO staff must prepare a “Certificate of Completion”, which signals the end of the incorporation process (§57178).
If the incorporation is disapproved by majority vote, the Commission must execute a "Certificate of Termination" (§57179). No substantially similar proposal for the same territory may be filed within two (2) years of the adoption of the Certificate of Termination (§57090).

The effective date of the new city should have been identified as part of the Commission resolution of approval. The Commission has exclusive authority to set the incorporation effective date (§57202). The Executive Officer must record the Certificate of Completion with County Recorder’s office within 90 days of the election (§57203).

X. POST INCORPORATION

After incorporation, LAFCO’s work is complete. However, the work of the new city has just begun.

Appendix F is an example of an agenda for the first meeting of a newly incorporated city. This is only an example; all newly incorporated cities should seek legal advice regarding the requirements for a newly incorporated city and newly elected city council.

OPR recommends that all new cities contact the League of California Cities, which offers several publications, classes and workshops for new city councils. It is also recommended that all LAFCOs obtain a copy of the League of California Cities publication, "A Guide For New Incorporated Cities" (March 1986) for distribution to newly incorporated city councils.

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LEAGUE OF CALIFORNIA CITIES

It may seem for a brief moment after the incorporation results certify the creation of your new city that the hard work is over. Fortunately, it has just begun—fortunately because shepherding a new city through its formative stages is a rewarding and exciting endeavor, one that will shape the character and direction of the city for years to come. The purpose of this publication is to make this process easier by providing practical advice and guidance to new city officials as to what must typically be accomplished during the periods immediately prior to and following the first council meeting. Newly elected officials in a new city often feel somewhat at a loss as to what to do immediately following the election; this manual is intended to provide pragmatic step-by-step assistance so that new officials can devote their time not to trying to reinvent the wheel, but to consideration of the important issues facing them... It is critical that council members have a basic understanding of conflict of interest laws...After the city is officially incorporated, all meetings of the city council are to be open and public in accordance with the Brown Act...Action of a city council can be taken only at duly convened public council meetings, at a place designated by ordinance...before the city can undertake to approve any discretionary project, it must review the possible environmental impact of the project pursuant to the California Environmental Quality Act.....

DATE: July 3, 2019

TO: Environmental Health
    Agricultural Commissioner
    Penn Valley MAC

Commissioner Johansen, District IV
Supervisor Hock, District IV
Principal Planner, Tyler Barrington

This project is being distributed to you for your review and comment. Your comments and/or conditions must be received in writing no later than July 22, 2019. In addition to sending a signed copy, please e-mail a digital copy, to the Project Planner listed below. If you need additional information to complete your review, please contact the Project Planner before the comment deadline.

PROJECT: An application for an Administrative Development Permit for a Certified Farmers Market Farm Stand located at an existing permitted commercial nursery and gift shop site.

APPLICANT: Shana Nussbaum

OWNER: Scott Gutierrez

REPR: None

APN: 051-152-007

FILE NO: PLN19-0116; MIS19-0007

LOCATION: 10493 Spencville Road in Penn Valley, across from the intersection of Penn Valley Drive and Spencville Road.

General Plan: CC
Region: Penn Valley Village Center
Zoning: C2-SP
Flood Map: 0608 Zone: X
ZDM #: 16a
Parcel Size: 0.96 acres
Farmland: Urban and Built Up Land
Prev. File #(#s): U73-023; TCP06-001; PA15-001; DVP17-01

Water: Well
Sewage: Septic
Fire: Penn Valley Fire
Schools: Penn Valley Union
Recreation: Western Gateway
Sup. Dist.: Hoek, District IV
Date Filed: 06/24/19

PROJECT PLANNER: Amanda Nolan, Assistant Planner
(530) 265-1257 • Email: Amanda.nolan@co.nevada.ca.us
NEVADA COUNTY, COUNTY EXECUTIVE OFFICE

950 Maidu Ave, Suite 220
Nevada City, CA 95959
530-265-7040

ceo@co.nevada.ca.us
MyNevadaCounty.com

NEVADA COUNTY CITIZEN'S ACADEMY
Learn about your local County government!

"I gained valuable understanding of the scope of County services."
- Susan Meagher
"I was impressed by the collaboration I saw between the many County departments."
- Tom Cross

PARTICIPATE!
Citizen’s Academy includes 10 weekly, Monday evening sessions (excluding holidays) typically from August through November.

INTERESTED?
Find more information at: www.MyNevadaCounty.com/CA2019
Join our Citizen’s Academy mailing list by emailing us at: ceo@co.nevada.ca.us

SCHEDULE

Session 1, August 19th:
Introduction to County Government
Session 2, August 26th:
County Finance
Session 3, September 2nd:
Emergency Services & IGS
Session 4, September 16th:
Community Development Agency
Session 5, September 23rd:
Sheriff Services
Session 6, September 30th:
Library & GIS
Session 7, October 7th:
Behavioral & Public Health
Session 8, October 21st:
Health & Human Services
Session 9, October 28th:
Public Safety Collaboration
Session 10, November 4th:
Board of Supervisors & Graduation

Citizen’s Academy participants learn the ins and outs of County government through tours of 6 County facilities and 20+ department presentations, covering a wide range of services from A (Agriculture) to Z (Zoning).