

## **2.1. POLICIES AND STANDARDS**

LAFCOs are charged with establishing policies and exercising their powers “. . . in a manner that encourages and provides planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space lands within those patterns” and with “. . . the discouragement of urban sprawl and the encouragement of the orderly formation and development of local agencies based upon local conditions and circumstances.” [§§56300 and 56301]

In carrying out its responsibilities, each LAFCO must conduct studies and review and make determinations on changes of organization, reorganizations and spheres of influence (SOIs).

The following policies and standards have been adopted by the Contra Costa LAFCO to assist in the review of proposals and the preparation of studies as necessary.

### **A. General Policy Statement**

The statutory goals of the LAFCO include the promotion of orderly growth and development by determining logical local boundaries [§56001], preservation of open space by encouraging development of vacant land within cities before annexation of vacant land adjacent to cities [§56377(b)], and preservation of prime agricultural land by guiding development away from presently undeveloped prime agricultural lands [§56377(a)].

Although LAFCO attempts to discourage urban sprawl, to preserve agricultural lands and open space, and to promote well-ordered and appropriate land use within the County, the Commission lacks authority to exercise the more specific powers that a general land use jurisdiction (county or city) can exercise when directly regulating land use density or intensity, property development or subdivision requirements [§56375(a)]. LAFCO intends that its policies promote the overall quality of life of the residents of Contra Costa County.

In considering proposals that would facilitate or lead to intensification of land uses, the Commission will consider consistency of the application with City and County general and specific plans that are relevant to the proposal or the affected territory.

The Commission will generally favor adopted plans that are supportive of the Commission’s responsibility to discourage urban sprawl, preserve open space and prime agricultural lands, provide for efficient public services and encourage the orderly formation and development of local agencies.

LAFCO will encourage proposals that enable urban development to include annexation to a city whenever reasonably possible and discourage proposals that enable urban development without annexation to a city. LAFCO will also encourage cities to annex lands that have been developed to urban levels, particularly areas that receive city services.

While not bound by the regulations promulgated by local agencies in this County, LAFCO prefers that proponents of any boundary or SOI change demonstrate that their

proposal will be consistent with such local regulations as may be relevant to the factors that LAFCO must consider pursuant to §56668.

This policy is to include, but is not limited to, the regulation of water and sewer agencies such as the East Bay Municipal Utility District and the Central Contra Costa Sanitary District.

LAFCO must also consider the impact of a proposal on the regional supply of residential housing for all income levels. LAFCO will usually encourage those applications, which improve the regional balance between housing and jobs.

**B. Preferred Service Provider**

The Legislature has found that a single multipurpose government agency accountable for community service needs and financial resources may be the best mechanism for establishing community service priorities, particularly in urban areas (§56001).

LAFCO shall generally consider, and approve, where appropriate and feasible, the provision of new or consolidated services in the following order of preference:

- 1) Annexation to an existing city.
- 2) Annexation to an existing multiple purpose special district.
- 3) Annexation to an existing single purpose special district.
- 4) Consolidation of existing districts.
- 5) Annexation to a subsidiary district or County Service Area (CSA).
- 6) Formation of a new CSA.
- 7) Incorporation of a new city.
- 8) Formation of a new multipurpose district.
- 9) Formation of a new single purpose district.

**C. Indemnification Policy**

LAFCO typically will tender defense of lawsuits to the real parties in interest (i.e., the proponents, and/or affected local agencies).

Upon submitting any proposal to LAFCO, applicants are required to enter into an agreement to indemnify LAFCO in the event of a legal challenge of a Commission decision.

**D. Policy on Spheres of Influence and Annexations**

The goals of the Contra Costa Local Agency Formation Commission include promotion of orderly growth and development by determining logical local agency boundaries [§56001], preservation of open space by encouraging development of vacant land within cities before annexation of vacant land adjacent to cities [§56377(b)], and the preservation of prime agricultural land by guiding development away from presently undeveloped prime agricultural lands [§56377(a)].

In order to accomplish these and other goals, LAFCO is required to review and update every five years the spheres of influence (SOIs) of local agencies in Contra Costa County [§56425].

An SOI is a plan for the probable physical boundaries and service area of a local agency [§56076] and includes policies for directing growth patterns. In accordance with State law, inclusion in an SOI makes land eligible for annexation but does not assure annexation. LAFCO must consider numerous other factors when considering an annexation, reorganization or change of organization.

SOIs may be amended by the Commission. When an SOI amendment is requested, the proponent shall submit documentation to support the determinations the Commission must make pursuant to §56425(a). For a city seeking an SOI amendment, particular attention should be paid to the current land uses in the county and city, the land uses planned for the city's present SOI and the land uses proposed for territory sought to be added to the SOI. Areas to remain in agricultural and open space should be clearly specified [§§56425(a), 56377].

As a precursor to boundary changes, requests for SOI amendments should address all relevant factors of §56668. Such requests should also specify how the policies of the CKH Act will be fostered with respect to the 1) orderly formation of local agencies [§56001] and 2) preservation of open space [§56059] and prime agricultural land [§56064], both within the existing boundaries of the agency and the proposed SOI of the agency [§56377].

LAFCO discourages inclusion of land in an agency's SOI if a need for services provided by that agency within a 5–10-year period cannot be demonstrated. To demonstrate that a proposed SOI amendment is timely, an applicant should indicate expected absorption and development rates for land already in the SOI, as well as land proposed to be added.

A request to expand an SOI should designate clearly the territory that may be sought for annexation and the anticipated timeframe. An agency should propose a reduction in its SOI to remove territory that the agency does not believe will be developed within 20 years.

Territory proposed to be annexed to an agency should be within the Urban Service Area [§56080] of the agency. Related infrastructure improvements should be included in the agency's 5-year Capital Improvement Program. Each agency expected to serve any portion of a city's SOI during the period should provide the city and LAFCO with an "intent to serve" statement. Such statements should demonstrate the reason, intent and capacity to serve the area by such evidence as resolutions of the governing boards establishing service area boundaries and ultimate service areas. The applicant shall also submit an adopted plan for financed infrastructure. [§56378].

Requests for changes of SOIs should be accompanied by summaries of the studies used to establish the SOI areas, copies of any 5-year Capital Improvement Program, and copies of any master service agreements, resolutions, or other such documentation for local agencies that may provide service to the area.

A Municipal Service review will be required prior to processing a substantial SOI amendment (§56430). LAFCO may find an SOI request inadvisable and/or premature if

the Commission is unable to determine from the application that the goals of the CKH Act would be served by approving the request [§§56425, 56426, 56668, 56377, 56001].

Territory for which an annexation is proposed should be within the adopted SOI of the annexing agency. If not, an SOI amendment will be required prior to consideration of the annexation. Territory for which an annexation is proposed should be within the area shown as the 5-year SOI-Urban Service Area in the adopted SOI of the annexing agency. Annexations proposed for territory beyond the 5-year SOI-Urban Service Area usually will be denied unless overriding reasons demonstrate need for the annexation at the present time. Whenever feasible, annexation to all agencies that are expected to provide urban services to the area should be submitted at the same time.

SOIs generally will not be amended concurrently with an action on the related change of organization or reorganization. A change of organization or reorganization will not be approved solely because an area falls within the SOI of any agency.

Proponents of an annexation must demonstrate that the proposed development within the annexation area will meet the annexing jurisdiction's adopted performance standards for facilities, services and traffic and that an adopted Capital Improvement Plan will provide for these facilities.

Annexation proposals should avoid creation of "islands" or corridors of territory not served by the annexing agency, and boundaries that are not definite and certain or do not conform to lines of assessment or ownership. The Commission's approval of boundary change proposals containing split parcels will typically be subject to a condition requiring the recordation of a parcel map, lot line adjustment or other instrument to avoid creating remnants of legal lots.

Territory to be annexed by a city shall be pre-zoned by the city. A map submitted by the proponents should show all zoning designations for the territory to be annexed.

E. Island Annexation Policies

1) General Policies

Recognizing that cities are the most logical providers of municipal services, and that unincorporated islands can be more effectively and efficiently served by surrounding cities, LAFCO is committed to the annexation of urban island areas.

LAFCO will collaborate with the County and cities in facilitating annexation of unincorporated urban islands.

LAFCO encourages the County and cities to coordinate development standards in urban island areas to facilitate the annexation of urban islands.

The Government Code contains special provisions for annexing small islands, which facilitate the annexation of islands of less than 150 acres (§56375.3).

In the interest of orderly growth and development, cities should annex urban unincorporated islands within their current SOIs before seeking to add new lands to their boundaries.

## 2) Annexation of Small Islands

The Legislature has delegated to local LAFCOs the authority to determine the boundary of any proposal. The purpose of this section is to recognize and harmonize existing legislation with a June 1, 2012, Opinion of the California Attorney General [95 Ops. Cal. Atty. Gen. 16 (2012)] regarding island annexations under Government Code section 56375.3. This policy will apply to the annexation of islands that were created prior to January 1, 2014 pursuant to Government Code sections 56375.3(a) and 56375.4.

- a) Whether unincorporated territory is an “island,” an “entire island or entire unincorporated island,” “part of a larger island,” “surrounded,” or “substantially surrounded,” are determinations to be made by the Commission, on a case-by-case basis, based on the evidence before it at the time those determinations are made.
  - b) A small island of unincorporated territory that is connected to and an integral or essential part of a large unincorporated island is not an entire island and may not be annexed to a city without a protest proceeding under Government Code section 56375.3(a).
  - c) A small island of unincorporated territory that is connected to, but not an integral or essential part of a large island, may be determined by the Commission to be an entire island or an entire unincorporated island under Government Code section 56375.3(b).
  - d) The following factors may be considered by the Commission in determining whether unincorporated territory is an integral or essential part of a large unincorporated island: (a) topography, (b) geography, (c) land uses, (d) infrastructure and (e) patterns of service delivery.
- 3) LAFCO precluded is from creating islands pursuant to Government Code section 56744 unless the Commission can make required findings pursuant to Government Code section 56375(m).

## F. Policy for Evaluating Applications Requesting the Provision of Water Service for Urbanizing Areas

In addition to the factors the Commission is required to evaluate and review pursuant to §56668, the following criteria also apply to ensure greater consistency in LAFCO’s decision-making process:

- 1) Any proposal for a change of organization that includes the provision of water service shall provide information sufficient to address the following: water supply, storage, treatment, distribution, and waste recovery; and to determine that adequate services, facilities, and improvements can be provided and financed by the agency responsible for the provision of such services, facilities and improvements.
- 2) Any proposal for reorganization (two or more changes of organization) will be evaluated based on each component organizational change. The Commission will then balance the overall benefits against the costs and adverse impacts in deciding on the reorganization as a whole.

- 3) In evaluating the capability of an annexing agency to provide the required service, the Commission shall take into account the agency's ability to acquire the resources necessary to provide the needed service (i.e., water rights necessary to provide the water services needed by an area proposed for annexation).
- 4) The Commission requires evidence that water service will be available. Such evidence may include, but is not limited to, the following: 1) A Plan for Service pursuant to §56653; 2) a legally binding "will serve" letter by the agency; or 3) legally binding agreement between the developer and the agency or other service provider, or all.
- 5) The Commission may determine that a need for service exists if there is a public health or safety threat or if the area's growth patterns indicate that the area is likely to be developed for urban uses within five years provided it is designated for urban uses in the appropriate land use authority's General Plan (§56133(c)).
- 6) Lands to be annexed shall be within the adopted sphere of influence of the affected agency at the time LAFCO approves the boundary change.
- 7) The annexation must be a reasonable and logical expansion of the agency's boundaries. Further, territory to be annexed must be contiguous to the annexing agency unless otherwise provided by the principal act under which the agency operates.

G. School Capacity

In addition to the factors and determinations required by state law, LAFCO may consider whether or not the affected territory (i.e., change of organization or reorganization) can be served by affected school districts, and whether or not there is or will not be sufficient existing school capacity to serve the affected territory at the time of development.

H. Service Plans

Requests for boundary changes must include a plan for providing municipal services (§56653). This section provides guidelines to assist in the review of service plans and facilitate consistency with LAFCO's stated purposes and objectives.

- 1) The plan for services shall include the following information:
  - a) An enumeration and description of the services to be extended to the affected territory;
  - b) The level and range of those services;
  - c) A plan and timeline of when those services can feasibly be extended to the affected territory;
  - d) A plan for improvement, or upgrading of structures, roads, sewer or water facilities, or other conditions the local agency would impose or require within the affected territory;
  - e) A plan for how the services will be financed if the change of organization is approved; and

- f) A description of whether the affected area is or will be proposed for inclusion within an existing improvement zone, redevelopment area, and assessment district or community facilities district.
- 2) The plan for services shall be prepared and submitted for all proposed changes of organization including those initiated by resolution of a local agency and those initiated by petition.
- 3) In the case of a proposed annexation, the plan for services should demonstrate that the range and level of services currently available within the area proposed for annexation will be maintained or exceeded by the annexing agency.
- 4) In the case of a proposed annexation, the plan for services should demonstrate that the cost of services to existing residents will not increase as a result of the annexation, unless a corresponding increase in the level of service also occurs.
- 5) The plan for services should demonstrate that proposed services will not result in any unnecessary duplication of services.
- 6) The plan for services should demonstrate that each service provider represents the most efficient and cost-effective source of service delivery.
- 7) In the case of a proposed reorganization consisting of annexations to multiple agencies, the plan for services shall address each of the items specified above for each annexing agency.

I. Municipal Service Review Guidelines

- 1) Purpose - To provide guidance to the Contra Costa Local Agency Formation Commission in preparing and conducting municipal service reviews.
- 2) Background - Effective January 1, 2001, the CKH Act requires LAFCO to review municipal services. The requirement for Municipal Service Reviews (MSRs) is in response to the identified need of a more coordinated and efficient public service structure to support California's growth. The MSR provides LAFCO with a tool to comprehensively study existing and projected public service conditions and to evaluate organizational options for accommodating growth, preventing urban sprawl, and ensuring that critical services are efficiently and cost-effectively provided.
- 3) Goals and Objectives - LAFCOs are required to conduct MSRs and prepare written statements of determinations with respect to each of the following [§56430], as revised 1/1/11.
  - a) Growth and population projections for the affected area.
  - b) The location and characteristics of any disadvantaged unincorporated communities (DUCs) within or contiguous to the SOI.
  - c) Present and planned capacity of public facilities, adequacy of public services, and infrastructure needs or deficiencies including needs or deficiencies related to sewers, municipal and industrial water, and structural fire protection in any DUCs within or contiguous to the SOI.
  - d) Financial ability of agencies to provide services.

- e) Status of, and opportunities for, shared facilities.
- f) Accountability for community service needs, including governmental structure and operational efficiencies.
- g) Any other matter related to effective or efficient service delivery, as required by Commission policy.

As part of the MSR, the Commission may assess various alternatives for improving efficiency and affordability of infrastructure and service delivery within and contiguous to the SOI, including, but not limited to, the consolidation of governmental agencies.

In conducting an MSR, the Commission may include a review of whether the agencies under review, including any public water system as defined in 56430, are in compliance with the California Safe Drinking Water Act. Further, the Commission may request information, as part of an MSR, from identified public or private entities that provide wholesale or retail supply of drinking water, including mutual water companies as defined in 56430.

The MSR process does not require LAFCO to initiate changes of organization based on service review findings; it only requires that LAFCO make determinations regarding the provision of public services per §56430. However, LAFCO, other local agencies and the public may subsequently use the information contained in the MSRs as a basis to pursue changes of organization or reorganization or sphere of influence amendments.

- 4) When Prepared - LAFCO will determine when MSRs are necessary. Generally, reviews will be prepared in conjunction with SOI studies or updates; however, MSRs may also be conducted independent of SOI updates based on a number of factors to be determined by the Commission. Such factors may include public health or safety issues, service provision issues associated with areas of potential growth or development, etc.

Minor amendments to a sphere of influence, as determined by LAFCO, will not require an MSR.

- 5) Services Addressed - MSRs will address identified services within the service review boundary of those agencies under LAFCO's jurisdiction and are associated with growth and development. Target services include, but are not limited to, water, sewer, drainage, libraries, roads, parks, health care, broadband (high-speed internet access and use), police, and fire protection. General government services such as courts, social services, human resources, treasury, tax collection and administrative services will not be included.
- 6) Agencies Included - Local agencies whose boundary changes are subject to LAFCO review, or are required to have an SOI, are subject to MSRs, and LAFCO shall encourage those local agencies to fully participate in the service review process. Services provided by other agencies (i.e., federal, state, private) may be



included in the service review in order to provide a comprehensive overview of service and provide context.

- 7) Boundaries - LAFCO will determine the geographic boundaries and agencies that will be the subject of an MSR. Factors that may be considered in determining a service review boundary include, but are not limited to, existing city and special district jurisdictional and sphere boundaries; topography; geography; community boundaries; tax/assessment zones; infrastructure locations; transportation systems and roads; areas with shared facilities; areas with shared social and economic communities of interest; plus, other factors as determined by LAFCO.

Service reviews may be conducted for a single agency, multiple agencies, on a sub-regional or countywide basis. An MSR may review services outside Contra Costa County, in conjunction with multi-county service providers (e.g., Byron Bethany Irrigation District, Dublin San Ramon Services District, East Bay Municipal Utility District, East Bay Regional Park District). Generally, multi-county MSRs will be prepared by the LAFCO of the principal county (§56066). Inter-agency coordination is encouraged.

- 8) Environmental Determination - The California Environmental Quality Act (CEQA) encourages the consideration of multiple related actions where appropriate. Whenever possible, LAFCO will work to streamline the MSR process by a) integrating SOI proposal processing and related CEQA processes with the MSR process; b) placing high priority on reviews of services affected by pending or anticipated proposals; c) working with city and county planners to identify areas where the short-term conduct of service reviews is needed to support orderly growth and development; and d) requesting that technical information needed for service reviews be included in the General, Specific and Master Service Plans of land use agencies and special districts.

Most MSRs will qualify for Categorical or Statutory Exemption under CEQA, as they are studies and are not typically accompanied by specific development proposals. Subsequent SOI actions may require additional environmental review.

- 9) Types of Service Reviews - Municipal Service Reviews will fall into two general categories:
  - a) Routine reviews are anticipated to be uncomplicated and straightforward with few concerns about the adequacy of public services. Routine service reviews may be conducted for single agencies or for multiple agencies that provide similar services. The boundary of a routine service review may cover a sub-region, region or the County.
  - b) Intensive reviews are anticipated to require detailed analysis of complex and controversial issues. An intensive MSR may result from a pending LAFCO proposal, or of service provision concerns otherwise identified by LAFCO.

- 10) Preparation

- a) The Commission will determine the priority, schedule, procedure and content for service reviews.

- b) LAFCO staff will provide a survey/questionnaire to the affected agency(ies) identified in the service review work plan.
- c) If needed, LAFCO may hold scoping meetings. All affected agencies interested agencies and persons or entities requesting notice will receive a mailed notice.
- d) LAFCO staff will review submitted MSR information, coordinate and follow-up with the affected agencies.
- e) LAFCO will prepare or cause to be prepared a Draft MSR for circulation to affected agencies and other interested parties for review and comment.
- f) The Draft MSR will be considered at a public hearing, at which time the Commission may accept the report with or without modifications, adopt the required determinations, direct staff to prepare the Final MSR, and take other actions as appropriate.
- g) The cost associated with conducting the baseline MSRs will be incorporated in the annual LAFCO budget, and will be shared by the funding agencies. Agencies requiring a separate or expedited review will be required to fund the MSR.

11) Timing

On or before January 1, 2008, and every five years thereafter, the Commission shall, as necessary, review and update every sphere of influence [§56425(g)]. MSRs will be completed, as necessary, concurrent with SOI formations, updates or substantial amendments, but not less than every five years.

12) Factors for Analysis - As part of its review of municipal services, LAFCO must prepare a written statement of its determination with respect to the following factors. [§56430]

Determination 1: Growth and population projections for the affected area

The efficient provision of public services is linked to an agency’s ability to plan for future needs. Such factors as projected growth in and around the agency’s service areas and impact of land use plans and growth patterns on service demands may be reviewed. In making a determination on growth and population projections, LAFCO may consider an agency’s ability to plan for future need.

Determination 2: The location and characteristic of any DUCs within or contiguous to the SOI.

Determination 3: Present and planned capacity of public facilities, adequacy of public services, and infrastructure needs or deficiencies including needs or deficiencies related to sewers, municipal and industrial water, and structural fire protection in any DUCs within or contiguous to the SOI.

The present and planned capacity of public facilities and services is linked to an agency’s ability to plan for future needs, including infrastructure (e.g., water, sewer, fire, broadband, etc.). The term “infrastructure needs and deficiencies” refers to the status of existing and planned infrastructure and its relationship to the quality of levels of service that can or need to be provided. In making a

determination on infrastructure needs or deficiencies, LAFCO may consider ways in which the agency has the ability and capacity to provide service. LAFCO shall consider service and infrastructure needs related to sewer, water and fire protection within a DUC as defined by LAFCO.

Determination 4: Financial ability of agencies to provide services

LAFCOs must weigh a community's public service needs against the resources available to fund the services. In making a determination on the financial ability of an agency to provide services, LAFCO may review such factors as an agency's potential for shared financing and/or joint funding applications, cost avoidance opportunities, rate structures, and other fiscal constraints and opportunities.

Determination 5: Status of, and opportunities for, shared facilities

If service providers develop strategies for sharing resources, public service costs may be reduced and service efficiencies increased. In making a determination on opportunities for shared facilities, LAFCO may consider if an agency's facilities are currently being utilized to capacity and whether efficiencies can be achieved by accommodating the facility needs of adjacent agencies.

Determination 6: Accountability for community service needs, including governmental structure and operational efficiencies

The service review may include options to provide more logical service boundaries to the benefit of customers and regional planning goals and objectives. In making a determination on government structure, LAFCO may consider possible consolidations, mergers and/or reorganizations. The service review may also consider the agency's management efficiencies in terms of operations and practices in relation to the agency's ability to meet current and future service demands.

Determination 7: Any other matter related to effective or efficient service delivery, as required by Commission policy.

J. Policies for Out of Agency Service Agreements

1) Introduction

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH) requires a city or special district to obtain written approval from LAFCO prior to providing new or extended service outside its jurisdictional boundary, with certain exceptions (Gov. Code §§56133 and 56134). Gov. Code §56133 sets forth a two-pronged test or criteria under which requests for out of agency services may be approved: either in response to an existing or impending threat to the health or safety of the public, or in anticipation of a later change in organization (i.e., annexation) for areas within the subject agency's sphere of influence (SOI). Specific procedures for submitting an out of agency service application can be found in Contra Costa LAFCO's Commissioner Handbook, section 3.15 Provision of Services by Contract. Gov. Code §56134 applies to certain contracts or agreements for the exercise of new or extended fire protection services outside a public agency's jurisdictional boundaries.

2) Purpose

The purpose of these policies is to guide the Commission in reviewing city and district requests to provide new or extended services by agreement outside their jurisdictional boundaries. This includes establishing policies and procedures to ensure that the application meets one of the two criteria under which approval may be granted, and to ensure consistency with respect to form, review and consideration of requests.

3) Objective:

The objective of these policies is to ensure that the extension of services by cities and districts outside their jurisdictional boundaries is logical and consistent with supporting orderly growth and development in Contra Costa County. Out of agency service is generally not intended to support new development.

4) Out of Agency Service Policies: General Statements

- a) Annexation to cities and special districts involving territory located within the affected agency's sphere of influence (SOI) is generally preferred to out of agency service.
- b) LAFCO will consider applicable Municipal Service Reviews (MSRs) and discourage out of agency service extensions that conflict with adopted MSR determinations or recommendations.
- c) Requests for out of agency service agreements are subject to the applicable provisions of the California Environmental Quality Act (CEQA).
- d) Commission approval is not required for cities or districts to provide new or extended services outside their jurisdictional boundaries if any of the exemptions apply in accordance with §56133(e) – see Section 3.15 for exceptions. The Commission encourages cities and districts to work with the Executive Officer in determining when the statutory exemptions may apply.

5) Form of Request

a) All Requests

Requests to authorize out of agency service shall be filed with the Executive Officer by the affected city or district. The application shall be signed by an authorized representative of the city or district. Requests shall be made in writing with a completed LAFCO application, payment in the amount prescribed under the Commission's adopted fee schedule, appropriate environmental document, proposed service agreement, and an executed and recorded deferred annexation agreement (DAA) and waiver of property owner protest rights. The recorded DAA shall run with the land and be binding on all future owners of the property. An indemnification agreement will be required with each application.

All requests for out of agency service are subject to the applicable provisions of CEQA.

b) Requests Due to Health or Safety Emergency

The Commission may authorize a city or district to provide new or extended services outside their jurisdictional boundary and outside or inside their SOI in response to an existing or impending threat to public health or safety (“emergency” – e.g., failing well or septic system) with documentation from the County Environmental Health Division, and in accordance with §56133(c) and LAFCO procedures. If LAFCO approves an emergency out of agency service request, and the city or district fails to initiate the provision of services within six months of the Commission’s approval, the out of agency service approval shall expire, unless otherwise specified by LAFCO.

The Commission authorizes the LAFCO Executive Officer, in consultation with the Chair or Vice Chair, to approve a city’s or district’s request for out of agency service if there is an existing or impending public health or safety emergency, as documented by the County Environmental Health Division. The Executive Officer shall report to the Commission on his or her administrative approval of any emergency out of agency service agreements at the next regularly scheduled LAFCO meeting. Such administrative approval can be made if the following criteria are met:

- The property is currently developed
- The lack of service being requested constitutes an *immediate* (i.e., approval needed within two months) health and safety concern as documented by County Environmental Health
- There are physical restrictions on the property that prohibit a conventional service delivery method (i.e., septic tank, private well, etc.)

c) Requests in Anticipation of Annexation

An out of agency service application must be accompanied by a change of organization or reorganization application, including an approved tax sharing agreement, in order for LAFCO to determine that the out of agency service is in anticipation of a change of organization (i.e., annexation) within the next 12 months. This dual application requirement may be waived in certain situations by the Commission if compelling justification is provided. Circumstances which may warrant such a waiver include, but are not limited to, the following:

- Lack of contiguity (e.g., city boundary) when the project was approved prior to 2011
- Service is only needed to serve a portion of a larger parcel, and annexation of the entire parcel is not desirable
- Other circumstances which are consistent with LAFCO statute and the policies of Contra Costa LAFCO

If immediate annexation (i.e., within 12 months) is not a feasible alternative, then the extension of services may be approved in anticipation of a later

annexation if the agency provides LAFCO with a resolution of intent to annex, as well as appropriate assurances (e.g., rezoning, plan for annexation, deferred annexation agreement, etc.) which demonstrate that out of agency service is an intermediate step toward eventual annexation.

6) Review of Request

The Executive Officer shall review the request in accordance with CKH and LAFCO's policies and procedures.

7) Consideration of Request

Once a request is deemed complete, the Executive Officer will prepare a written report with a recommendation. The Executive Officer will present his or her report and recommendation at a public hearing for Commission consideration in accordance with CKH and LAFCO's policies and procedures. The Executive Officer's written report will be made available to the public for review prior to the scheduled hearing and include an evaluation of the following factors:

- a) The ability of the applicant to extend the subject service to the affected land without adversely affecting current service levels within the existing service boundary.
- b) If the request is to address a health or safety emergency, whether the documentation satisfactorily demonstrates compliance with CKH and LAFCO policies and procedures.
- c) If the request is in anticipation of future annexation, whether the application provides adequate assurances in furtherance of a future annexation.
- d) The application's consistency with the policies and general plans of affected local agencies.
- e) The application's effect on growth and development within and adjacent to the affected land; and whether the out of agency service extension will contribute to premature development of fringe areas or development in areas designated for non-urban uses.
- f) Whether the proposal contributes to the premature conversion of agricultural land or other open space land.

The Commission and the Executive Officer, as authorized by the Commission, may approve the request for out of agency service with or without conditions, or may deny the request. Unless otherwise specified in the LAFCO resolution of approval, out of agency service is allowed for the subject application only, and any future extension or expansion of service is subject to LAFCO's approval.

If the request to provide out of agency service is approved or denied, the applicant may request reconsideration within 30 days citing the reasons for reconsideration.

8) Out-of-Agency Fire Protection Service Contract – Gov. Code §56134

LAFCO is charged with reviewing and acting on out-of-agency fire service protection contracts that provide new or extended fire protection services outside

an agency's jurisdictional boundaries if the contract meets one of the following thresholds: (1) the contract transfers responsibility for providing services in more than 25% of a public agency's service area to another public agency; or (2) changes the employment status of more than 25% of the employees of a public agency (Gov. Code §56134).

These applications must include a comprehensive fiscal analysis and a plan for services.

#### K. Reconsideration of LAFCO Decisions

- 1) Content of requests for reconsideration - Requests for reconsideration of LAFCO resolutions making determinations are permitted pursuant to the CKH Act. Requests must be submitted in writing. The Commission will determine whether a reconsideration request should be considered, and render a decision based on the following: [§§56383, 56895]
  - a) The applicant meets the statutory deadline for submitting the request.
  - b) The request sets forth the specific modification being sought.
  - c) A processing fee is paid.
  - d) The request demonstrates that reconsideration is required to correct a procedural defect in LAFCO's earlier action.
  - e) Newly discovered evidence, material to the request for reconsideration and relevant to the Commission's decision on the boundary change, is available which could not, with reasonable diligence, have been discovered and produced at the time of initial LAFCO consideration.
- 2) Final Action – At the conclusion of its consideration, the Commission may approve or disapprove, with or without amendment, wholly, partially or conditionally, the request for reconsideration.

#### L. City Incorporations

Incorporation means the formation of a city with corporate powers.

These policies, along with the Procedures for Processing an Incorporation Proposal found in the "Procedures" section of this handbook, supplement the Governor's Office of Planning and Research "Guide to the LAFCO Process for Incorporation." Application requirements, Certificate of Filing and timeframes, and fee requirements are described in the LAFCO Procedures for Processing an Incorporation Proposal.

The proposed incorporation should be based upon a need for services, maintenance of community identity, or controls that can best be provided by the proposed agency and in the absence of existing alternatives that could provide the service or control in a more efficient manner.

The LAFCO acts as a neutral hearing body in evaluating the merits of the proposal without having a stake in the outcome of an incorporation effort.

The following Commission policies are intended to guide unincorporated communities in pursuing incorporation, and to maximize the likelihood of forming a city, which can financially sustain itself:

***General Incorporation Policies***

- 1) A proposed incorporation must satisfy a demonstrated need for services, and promote the health, safety and welfare of the service community.
- 2) An incorporation proposal must define the relationship of the new city to existing agencies, including the County. The Commission will study the fiscal impacts of the incorporation proposal on existing agencies.
- 3) While State law requires that an area proposed for incorporation shall have at least 500 registered voters residing within the affected area (§56043), the Contra Costa LAFCO recommends that the area proposed for incorporation contain a minimum of 10,000 people.

***Boundaries***

- 1) An area proposed for incorporation must be compact and contiguous and possess a community identity.
- 2) A proposed incorporation must not conflict with the logical expansion of adjacent governmental agencies. Incorporation proposals involving land within an existing city sphere of influence (SOI) will not be accepted for filing. If a cityhood proposal would conflict with an established city's SOI, the incorporation proponent must first request, and the Commission must approve, an SOI amendment to exclude such area, prior to consideration of the incorporation proposal.
- 3) Areas included within the proposed incorporation boundaries should consist of:
  - a) Existing developed areas,
  - b) Areas which are planned for development, and/or
  - c) Areas which are planned for development supporting extensions of infrastructure, such as within the next 10 years.
- 4) Areas which should not be included within the proposed incorporation boundaries include:
  - a) Agricultural and open space lands which are not designated for development in the future, such as within the next 10 years (§56377).
  - b) Lands specifically designated by the County General Plan for natural resource, agriculture, or open space uses.
  - c) Exclusions of land that would result in islands, flags, peninsulas, or boundary configurations, which are illogical and difficult to serve.
- 5) With regard to special districts in the incorporation area:
  - a) New cities should assume jurisdiction over as many services in the incorporation area as feasible.



- b) District territory included in an incorporation area should be detached from the district or the district dissolved, unless LAFCO determines that there is an overriding reason to retain the district.
- c) Incorporation boundaries should be drawn so that community based special districts are wholly included or excluded from the incorporation boundary, unless the Commission determines that there is a compelling reason to divide the district.
- d) Detachment from a region-wide district which provides service to multiple communities outside the incorporation area should not be approved unless the Commission determines that there is an overriding benefit from the detachment.
- e) All districts whose service responsibility or territory would be changes as a result of the incorporation should participate in the incorporation proceedings to mitigate negative fiscal impacts of the incorporation.

### ***Fiscal Policies Relating to Incorporation***

- 1) In approving an incorporation, the Commission must make a finding of financial feasibility. The Commission defines “financial feasibility” to mean the ability of a new city to maintain pre-incorporation service levels.
- 2) In determining feasibility, the Commission will consider only those revenues that are currently available to all general law cities. The Commission will not consider new revenues derived through special taxes or assessments, which might become available through possible actions of a future city council. The Commission will consider existing county assessments and taxes in place at the time of the incorporation in the determination of financial feasibility.
- 3) The Commission may consider an incorporation proposal which is conditioned upon the imposition of a new revenue source (e.g., assessment or tax) subject to voter approval.
- 4) All revenue estimates/projections contained in the Comprehensive Fiscal Analysis (CFA) shall be conservative.
- 5) Costs for functions that are not being directly assumed from another agency (e.g., the County) should use similarly sized cities within the nine county Bay Area as a basis for estimates. This is particularly applicable to administrative functions, salaries and benefits.
- 6) Proposition 13 allows for a maximum increase in assessed value of two percent annually for individual properties in the absence of a change in ownership. When the general rate of inflation is higher than two percent, the effect is a loss in real dollars from the existing tax base (unless the rate of turnover and property value increases are sufficiently higher). Property tax projection methodology must take into account the potential deflation of property tax dollars.
- 7) While State law only requires an analysis of the city’s first three years, Contra Costa LAFCO requires an analysis projecting out a minimum of eight years following incorporation. This is to reflect those State subventions that represent a

temporary “bump” to help new cities, to capture the fiscal status of the new city at the point when subventions “catch-up” with actual population, and to help gauge the long-term viability of the city.

- 8) In determining compliance with Government Code §56720, the Commission finds that a “reasonable reserve” is a contingency fund equal to a minimum of 10% of the projected general funds of the new city accumulated not later than three years from the effective date of the incorporation.

#### M. 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. LAFCO may approve a proposal for incorporation if it finds either of the following:

- 1) The County and all of the affected agencies agree to the proposed transfer; or
- 2) 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.

#### *Purpose*

The purpose of the revenue neutrality policy is as follows:

- To institute a process for analysis and mitigation of the fiscal impacts of incorporation on the county that results in stable, predictable financial outcomes for both the county and the new city.
- To define the terms and budget items to be negotiated under revenue neutrality requirements of Government Code §56815.
- To mitigate potential fiscal losses to the county without making incorporation impossible for local communities ready for self-governance or precluding an adequate financial basis for new cities.
- To specify how participants in the incorporation process can develop proposed terms and conditions of incorporation that will meet revenue neutrality criteria and the standards of the Commission in making the findings required by §56815 and §56375 for approval of incorporation.
- To implement the legislative mandates for achieving revenue neutrality through a rational and predictable process for gathering information, determining the appropriate content of revenue neutrality agreements and providing for the revision of those agreements.

### *Procedure for Revenue Neutrality*

- A draft Comprehensive Fiscal Analysis (CFA) is a prerequisite to revenue neutrality negotiations. LAFCO staff will convene a revenue neutrality negotiating committee composed of representatives of the county, representatives of incorporation proponents, and other affected agencies, as needed. LAFCO staff will attend meetings of the committee in order to facilitate discussions and compliance with this policy.
- The revenue neutrality committee will have up to 90 days to negotiate and propose terms and conditions to meet the requirements of §56815. Any proposals for terms and conditions of revenue neutrality should adhere to the standards for content described in this policy, and should include a description of the methodologies and assumptions leading up to the proposed terms and conditions. Revenue neutrality agreements should also provide criteria and a process for modification of the agreement after incorporation.
- At the conclusion of the meetings of the revenue neutrality committee or at the end of the 90-day negotiating period, the LAFCO Executive Officer will certify that agreement regarding revenue neutrality has been reached or has not been reached.
- If agreement has been reached, ratification by resolution of the County Board of Supervisors and by letter from an authorized representative of the incorporation proponents are submitted to LAFCO staff for inclusion in the CFA, staff report and recommendations.
- If no agreement regarding the proposed terms and conditions for revenue neutrality is reached within the 90-day negotiating period, LAFCO staff will draft proposed terms and conditions for use in the CFA and for recommendation to the Commission at its public hearing.

### *Standards*

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

- 1) Revenue neutrality agreements shall be based on the county cost and revenues for the most recent prior fiscal year, for which data are available, provided that the data are not more than one fiscal year old. Only identifiable and recurring revenues and expenditures should be evaluated for the purposes of determining revenue neutrality. Anticipated or projected revenue growth should not be included.
- 2) Expenditures for services transferred to a new city should be evaluated on a “net cost” basis. Services funded on a cost recovery basis (e.g., current planning, building inspection) are by definition, revenue neutral and need not be included in the analysis.
- 3) Costs of capital improvements are not recurring costs and need not be included in the analysis, except by agreement of the parties.

- 4) Countywide costs for regional services and administrative functions, which are required to support county governance of both incorporated and unincorporated areas, should not be included in defining services transferred to a new city.
- 5) Inflationary factors should not be included in the analysis of revenue neutrality provisions unless the resulting agreement provides for annual adjustment of mitigation payments based on actual data.
- 6) Restricted and unrestricted revenues should be evaluated separately. An agency may pay a portion of its annual revenue neutrality payment with restricted funds if both agencies agree and a legal exchange mechanism can be created.
- 7) Fees charged by the county for services to other jurisdictions (e.g., property tax administration) should be considered as an offsetting county revenue in the calculation of fiscal effects on the county.

### ***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 terms and conditions permitted under §56886.

### ***Duration of Fiscal Impact Mitigation***

The term of mitigation payments may either be ongoing or limited to a specific number of years. Agreements that limit revenue neutrality payments should establish the terms of the payments using the following:

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

### ***Method of Annual Payment***

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

### ***Effective Date of Incorporation***

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

## *Environmental Review of Incorporation Proposals – CEQA*

Incorporations are projects subject to CEQA and require environmental review. LAFCO, as Lead Agency for an incorporation, must prepare the required documentation. The LAFCO Executive Officer is the Environmental Coordinator for LAFCO and is responsible for the environmental review process.

### N. District Latent Powers

Latent powers are those services, facilities, functions and/or powers authorized by the principal act under which the district was formed, but not currently exercised.

A proposal to provide a new or different function or class of service or the expansion of district latent powers must be made by resolution of application by the legislative body of a special district. Prior to submitting the resolution to LAFCO, the legislative body of the district shall conduct a public hearing. The resolution must include all of the information specified for a petition (§56700) and must include a plan for services pursuant to §56653. Pursuant to §56824.12, the plan for service must also include the following:

- 1) The total estimated cost to provide the new or different function or class of service;
- 2) The estimated cost of the new or different function or class of service to customers;
- 3) An identification of the existing providers and the potential fiscal impacts to the customers of the existing providers;
- 4) A plan for financing the new or different function or class of service; and
- 5) Alternatives for the establishment of the new or different function or class of service.

The Commission shall conduct a public hearing and shall review and approve or disapprove with or without amendments, wholly, partially or conditionally the proposal for the establishment of new or different function or class of service.

In approving a new or different function or class of service, LAFCO may restrict the provision of the new or different function or class of service to a geographically specific area within the district. If the Commission imposes this restriction, any subsequent extension or enlargement of the service area will be subject to LAFCO review.

There are no protest proceedings in conjunction with the establishment of a new or different function or class of service, or the extension or enlargement of the service area.

## O. AGRICULTURAL AND OPEN SPACE PRESERVATION POLICY

### PREFACE

LAFCO's enabling and guiding legislation, the Cortese Knox Hertzberg (CKH) Act, begins with the following statement.

“The Legislature finds and declares that it is the policy of the state to encourage orderly growth and development which are essential to the social, fiscal, and economic well-being of the state. The Legislature recognizes that the logical formation and determination of local agency boundaries is an important factor in promoting orderly development and in balancing that development with sometimes competing state interests of discouraging urban sprawl, preserving open-space and prime agricultural lands, and efficiently extending government services.”  
(§56001)

Beginning in the late 1800s, farmers and ranchers made Contra Costa County an important source of agricultural products. Much of the County has good soils, a mild climate, and adequate water. Western and central Contra Costa were used for agriculture well into the twentieth century. John Muir farmed and ranched approximately 2,600 acres in what is now Martinez, Concord, and the Alhambra Valley. While the County's population was increasing, by current standards, the County's population was small. The 1910 census recorded 31,764 residents, less than the 2015 population of Pleasant Hill.

Development, which began in earnest after World War II, transformed Contra Costa County. As urban and suburban development occurred, Contra Costa County experienced significant reduction in the amount and relevant economic importance of agricultural lands. Simultaneously, critical open space habitat for sensitive species declined. By 2010, the Census reported that Contra Costa had 1,049,025 people, representing 3,300% growth since 1910. Contra Costa County's 2040 population is forecast to be 1,338,400.

As a result of population and job growth, agricultural land was converted to houses, schools, commercial centers, job centers, and transportation corridors. In 2015, there were about 30,000 acres of active agricultural land in Contra Costa County, excluding rangeland and pastureland, most of it located in the eastern portion of the County. There are approximately 175,000 acres of rangeland and pastureland in the County.<sup>1</sup>

The total gross value of agricultural crops in Contra Costa County was \$120,441,000 in 2017. Agriculture is an important economic sector in Contra Costa County. The value of agricultural has fluctuated in recent years.<sup>2</sup> Some worry that Contra Costa's agricultural industry may approach a tipping point beyond which agriculture becomes less viable due to a lack of labor, suppliers, and processors located nearby.<sup>3</sup>

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<sup>1</sup> 2017 Crop and Livestock Report, Contra Costa County Agricultural Commissioner

<sup>2</sup> 2008-2015 Crop and Livestock Reports, Contra Costa County Agricultural Commissioner

<sup>3</sup> Sustaining our Agricultural Bounty: An Assessment of the Current State of Farming and Ranching in the San Francisco Bay Area – A white paper by the American Farmland Trust, Greenbelt Alliance and Sustainable Agriculture Education (SAGE), January 2011

The pressure on agricultural land also extends to wildlife and riparian areas. In some cases, conversion of these lands through development disrupts an ecosystem that used to depend on the now developed land as a travel route, or a seasonal or permanent source of food and water.

The County and some cities are active in efforts to preserve agricultural and open space lands. For example, in the 1970s, the County created a County Agricultural Core to the east and south of Brentwood.

The City of Brentwood has an agricultural mitigation program that collected more than \$12 million in mitigation fees; and through conservation organizations, acquired the development rights over approximately 1,000 acres of agricultural lands. In 2006, the voters adopted Urban Limit Lines (ULLs) for the County and each municipality, and these actions helped protect undeveloped land outside the ULLs. Furthermore, the County adopted the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (ECCCHCP/NCCP) that protects sensitive habitat for plants and animals in East Contra Costa.

LAFCO embraces its objectives of encouraging orderly growth and development while discouraging urban sprawl, efficiently extending government services, and preserving open space and prime agricultural lands. Through the review and approval or denial process of boundary changes and other applications, LAFCO has considerable authority to provide for the preservation of open space and agricultural land, and impose terms and conditions. (§§56885 - 56890).

While LAFCO has authority to achieve the objectives of the CKH Act, there are things that LAFCO cannot do, for example, directly regulate land use.<sup>4</sup> LAFCO defers to agencies that have land use planning authority. Therefore, successful preservation of prime agricultural, agricultural and open space lands and of agriculture as a business requires that both applicants and other agencies also lead. At the end of this policy are observations about other opportunities facing residents, advocacy organizations, and governmental agencies that could also strengthen and preserve agriculture and open space lands.

Contra Costa LAFCO adopted this policy on November 9, 2016, with amendments on December 14, 2016, and agreed to review the policy in one year. Minor amendments were approved on November 14, 2018.

### **AUTHORITY OF LAFCO**

LAFCO's authority derives from the CKH Act. Among the purposes of LAFCO are to encourage planned, orderly, and efficient urban development while at the same time giving appropriate consideration to the preservation of prime agricultural, agricultural and open space lands (§56300). The CKH Act includes provisions that grant LAFCO the authority to consider and provide for the preservation of open space and agricultural lands. Among these provisions is §56377 which describes the intent of the legislation with regard to agricultural lands:

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<sup>4</sup> "A commission shall not impose any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements" [§§56375(6), 56886].

“56377. In reviewing and approving or disapproving proposals which could reasonably be expected to induce, facilitate, or lead to the conversion of existing open space lands to uses other than open space uses, the commission shall consider all of the following policies and priorities:

(a) Development or use of land for other than open space uses shall be guided away from existing prime agricultural lands in open space use toward areas containing non-prime agricultural lands, unless that action would not promote the planned, orderly, efficient development of an area.

(b) Development of existing vacant or non-prime agricultural lands for urban uses within the existing jurisdiction of a local agency or within the SOI of a local agency should be encouraged before any proposal is approved that would allow for or lead to the development of existing open space lands for non-open space uses that are outside of the existing jurisdiction of the local agency or outside of the existing SOI of the local agency.”

LAFCO is specifically charged in some instances with protecting open space and agricultural land. For example, an island annexation may not be approved if the island consists of prime agricultural land [§56375.3(b)(5)]. LAFCO may not approve a change to an SOI where the affected territory is subject to a Williamson Act contract or farmland security zone unless certain conditions exist (§§56426 and 56426.5).

When making a decision, LAFCO must consider whether an application and its effects conform to both the adopted commission policies on providing planned, orderly, efficient patterns of urban development, and the policies and priorities in Sections 56377 and 56668(d). LAFCO must consider the effect of an application on maintaining the physical and economic integrity of agricultural lands [§56668 (e)]. LAFCO may also consider whether the public good served by a proposal outweighs the purposes of LAFCO policies.

An application for a change of organization, reorganization, the establishment of or change to a sphere of influence (SOI), the extension of extraterritorial services, and other LAFCO actions as contained in the CKH Act will be evaluated in accordance with LAFCO’s adopted Agricultural and Open Space Preservation Policy.

### **PURPOSE OF THE POLICY**

The purpose of this policy is threefold: 1) to provide guidance to the applicant on how to assess the impacts on prime agricultural, agricultural and open space lands of applications submitted to LAFCO, and enable the applicant to explain how the applicant intends to mitigate those impacts; 2) to provide a framework for LAFCO to evaluate and process in a consistent manner, applications before LAFCO that involve or impact prime agricultural, agricultural and/or open space lands; and 3) to explain to the public how LAFCO will evaluate and assess applications that affect prime agricultural, agricultural and/or open space lands.



## **DEFINITIONS**

Several terms are important in understanding LAFCO's responsibility and authority to preserve prime agricultural, agricultural and open space lands. These terms and definitions are found below and are applicable throughout these policies. The CKH Act contains the following definitions for agricultural land, prime agricultural land and open space:

**56016. "Agricultural lands"** means land currently used for the purpose of producing an agricultural commodity for commercial purposes, land left fallow under a crop rotational program, or land enrolled in an agricultural subsidy or set-aside program.

**56064. "Prime agricultural land"** means an area of land, whether a single parcel or contiguous parcels, that has not been developed for a use other than an agricultural use and that meets any of the following qualifications:

(a) Land that qualifies, if irrigated, for rating as class I or class II in the USDA Natural Resources Conservation Service land use capability classification, whether or not land is actually irrigated, provided that irrigation is feasible.

(b) Land that qualifies for rating 80 through 100 Storie Index Rating.

(c) Land that supports livestock used for the production of food and fiber and that has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture in the National Range and Pasture Handbook, Revision 1, December 2003.

(d) Land planted with fruit or nut-bearing trees, vines, bushes, or crops that have a nonbearing period of less than five years and that will return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than four hundred dollars (\$400) per acre.

(e) Land that has returned from the production of unprocessed agricultural plant products an annual gross value of not less than four hundred dollars (\$400) per acre for three of the previous five calendar years.

**56059. "Open space"** means any parcel or area of land or water which is substantially unimproved and devoted to an open-space use, as defined in Section 65560.

**65560.** (a) "Local open-space plan" is the open-space element of a county or city general plan adopted by the board or council, either as the local open-space plan or as the interim local open-space plan adopted pursuant to Section 65563.

(b) "Open-space land" is any parcel or area of land or water that is essentially unimproved and devoted to an open-space use as defined in this section, and that is designated on a local, regional, or state open-space plan as any of the following:

(1) Open space for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays, and estuaries; and coastal beaches, lakeshores, banks of rivers and streams, greenways, as defined in Section 816.52 of the Civil Code, and watershed lands.

(2) Open space used for the managed production of resources, including, but not limited to, forest lands, rangeland, agricultural lands, and areas of economic importance for the production

of food or fiber; areas required for recharge of groundwater basins; bays, estuaries, marshes, rivers, and streams that are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.

(3) Open space for outdoor recreation, including, but not limited to, areas of outstanding scenic, historic, and cultural value; areas particularly suited for park and recreation purposes, including access to lakeshores, beaches, and rivers and streams; and areas that serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, greenways, and scenic highway corridors.

(4) Open space for public health and safety, including, but not limited to, areas that require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs, and areas required for the protection and enhancement of air quality.

(5) Open space in support of the mission of military installations that comprises areas adjacent to military installations, military training routes, and underlying restricted airspace that can provide additional buffer zones to military activities and complement the resource values of the military lands.

(6) Open space for the protection of places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code (i.e., Native American Historical, Cultural and Sacred Sites).

## **GOALS, POLICIES AND GUIDELINES**

The following Goals, Policies, and Guidelines are consistent with the legislative direction provided in the CKH Act. The Goals are intended to be the outcome LAFCO wants to achieve. The Policies provide direction with regard to how those Goals should be achieved by providing specific guidance for decision makers and proponents. Guidelines give stakeholders procedures and practical tips regarding what information LAFCO commissioners and staff need to evaluate an application that affects prime agricultural, agricultural and/or open space lands.

### **GOALS**

Agriculture and open space are vital and essential to Contra Costa County's economy and environment. Accordingly, boundary changes for urban development should be proposed, evaluated, and approved in a manner that is consistent with the continuing growth and vitality of agriculture within the county. Open space lands provide the region with invaluable public benefits for all who visit, live and work in Contra Costa County. The following goals will help guide LAFCO's decisions regarding prime agricultural, agricultural and open space lands.

**Goal 1.** Minimize the conversion of prime agricultural land and open space land to other land uses while balancing the need to ensure orderly growth and development and the efficient provision of services.<sup>5</sup>

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<sup>5</sup> *In minimizing the conversion of open space land, the Commission may give lower priority to rangeland as defined per Public Resources Code 4789.2(i).*

**Goal 2.** Encourage cities, the county, special districts, property owners and other stakeholders to work together to preserve prime agricultural, agricultural and open space lands.

**Goal 3.** Incorporate agricultural and open space land preservation into long range planning consistent with principles of smart growth at the state, county, and municipal levels.

**Goal 4.** Strengthen and support the agricultural sector of the economy.

**Goal 5.** Fully consider the impacts an application will have on existing prime agricultural, agricultural and open space lands.

**Goal 6.** Preserve areas that sustain agriculture in Contra Costa County.

## **POLICIES**

It is the policy of Contra Costa LAFCO that, consistent with the CKH Act, an application for a change in organization, reorganization, for the establishment of or change to an SOI, the extension of extraterritorial services, and other LAFCO actions as contained in the CKH Act (“applications”), shall provide for planned, well-ordered, efficient urban development patterns with appropriate consideration to preserving open space, agricultural and prime agricultural lands within those patterns. LAFCO’s Agricultural and Open Space Preservation Policy provides for a mitigation hierarchy which 1) encourages avoidance of impacts to prime agricultural, agricultural and open space lands, 2) minimizes impacts to these lands, and 3) mitigates impacts that cannot be avoided while pursuing orderly growth and development.

The following policies support the goals stated above and will be used by Contra Costa LAFCO when considering an application that involves prime agricultural, agricultural and/or open space lands:

**Policy 1.** The Commission encourages local agencies to adopt policies that result in efficient, coterminous and logical growth patterns within their General Plan, Specific Plans and SOI areas, and that encourage preservation of prime agricultural, agricultural and open space lands in a manner that is consistent with LAFCO’s policy.

**Policy 2.** Vacant land within urban areas should be developed before prime agricultural, agricultural and/or open space land is annexed for non-agricultural and non-open space purposes.<sup>6</sup>

**Policy 3.** Land substantially surrounded by existing jurisdictional boundaries (e.g., islands) should be annexed before other lands.

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<sup>6</sup> *The Commission recognizes there may be instances in which vacant land is planned to be used in a manner that is important to the orderly and efficient long-term development of the county and land use agency and that differs from the proposed use of the area in an application to LAFCO. LAFCO will consider such situations on a case-by-case basis.*

**Policy 4.** Where feasible, and consistent with LAFCO policies, non-prime agricultural land should be annexed before prime agricultural land.

**Policy 5.** While annexation of prime agricultural, agricultural and open space lands is not prohibited, annexation of these areas for urban development is not encouraged if there are feasible alternatives that allow for orderly and efficient growth. Large lot rural development that places pressure on a jurisdiction to provide services and causes agricultural areas to be infeasible for farming or agricultural business, is discouraged.

**Policy 6.** The continued productivity and sustainability of agricultural land surrounding existing communities should be promoted by preventing the premature conversion of agricultural land to other uses and, to the extent feasible, minimizing conflicts between agricultural and other land uses. Buffers and/or local right to farm ordinances should be established to promote this policy. Contra Costa County has a Right to Farm ordinance which requires notification of purchasers and users of property adjacent to or near agricultural operations of the inherent potential problems associated with such purchase or residential use.

**Policy 7.** Development near agricultural land should minimize adverse impacts to agricultural operations.

**Policy 8.** Development near open space should minimize adverse impacts to open space uses.

**Policy 9.** The Commission will consider feasible mitigation (found in the following guidelines) if an application would result in the loss of prime agricultural, agricultural and/or open space lands.

**Policy 10.** Any mitigations that are conditions of LAFCO's approval of an application should occur close to the location of the impact and within Contra Costa County.

## **GUIDELINES**

These Guidelines are intended to provide further direction regarding the application of LAFCO's Goals and Policies; to advise and assist the public, agencies, property owners, farmers, ranchers and other stakeholders with regard to LAFCO's expectations in reviewing an application that involves prime agricultural, agricultural and/or open space lands; and to provide sample mitigation measures.

**Guideline 1.** Applications submitted to LAFCO involving prime agricultural, agricultural and/or open space lands shall include an Agricultural and Open Space Impact Assessment. At a minimum the following shall be addressed as part of the assessment:

- a. An application must discuss how it balances the State's interest in preserving prime agricultural and/or open space lands against the need for orderly development (§56001).
- b. An application must discuss its effect on maintaining the physical and economic integrity of agricultural lands [§56668 (e)].

- c. An application must discuss whether it could reasonably be expected to induce, facilitate, or lead to the conversion of existing open space land to uses other than open space uses (§56377).
- d. An application must describe whether, and if so, how it guides development away from prime agricultural, agricultural and/or open space lands.
- e. An application must describe whether, and if so, how it facilitates development of existing vacant or non-agricultural and/or non-open space lands for urban uses within the existing boundary or SOI of a local agency.
- f. An application must discuss what measures it contains that will preserve the physical and economic integrity of adjacent prime agricultural, agricultural and/or open space land uses.

**Guideline 2.** If an application involves a loss of prime agricultural, agricultural and/or open space lands, property owners, cities and towns, the county, special districts, and other agricultural and open space conservation agencies should work together as early in the process as possible to either modify the application to avoid impacts or to adequately mitigate the impacts.

**Guideline 3.** The following factors should be considered for an annexation of prime agricultural, agricultural and/or open space lands:

- a. The applicant should reference and include a land use inventory that indicates the amount of available land within the subject jurisdiction for the proposed land use. The land use inventory may be one that has been prepared by the applicable land use agency.
- b. The applicant should provide an evaluation of the effectiveness of measures proposed by the applicant to mitigate the loss of prime agricultural, agricultural and/or open space lands, and to preserve adjoining lands for prime agricultural, agricultural and/or open space use to prevent their premature conversion to other uses. Examples of such measures include, but are not limited to:
  - 1. Acquisition or dedication of prime agricultural and agricultural land (e.g., substitution ratio of at least 1:1 for the prime agricultural land annexed), development rights, open space and agricultural conservation easements to permanently protect adjacent or other prime agricultural, agricultural and/or open space lands within the county. Any land previously protected should not be used as the mitigation for any other project.
  - 2. Participation in other local development programs that direct development towards urban areas in the county (such as transfer or purchase of development credits).
  - 3. Payment to local government agencies and/or recognized non-profit organizations working in Contra Costa County for the purpose of preserving prime agricultural, agricultural and/or open space lands; payment should be sufficient to fully fund the acquisition, dedication, restoration and maintenance of land which is of equal or better quality.

4. Establishment of buffers sufficient to protect adjacent prime agricultural, agricultural and/or open space lands from the effects of development. Such buffers may be permanent, temporary, or rolling, and may take many forms (e.g., easements, dedications, appropriate zoning, streets, parks, etc.).
5. Where applicable, compliance with the provisions of the ECCCHCP/NCCP or a similar plan enacted by the County, cities or another regional, state or federal permitting agency.
6. Other measures agreed to by the applicant and the land use jurisdiction that meet the intent of replacing prime agricultural and agricultural lands at a minimum 1:1 ratio.
7. Participation in an advanced mitigation plan for prime agricultural, agricultural and/or open space lands.
8. Participation in measures to promote and/or enhance the viability of prime agricultural and agricultural lands and the agricultural industry in Contra Costa County.
9. Protect open space lands utilizing science-based impact analysis.
10. Adopt a “Right to Farm” agreement that shall be included in the title of the land and in any subdivision thereof when an application proposes to convert prime agricultural and agricultural lands to other uses and is adjacent to prime agricultural and agricultural lands. Contra Costa County has a Right to Farm ordinance which requires notification of purchasers and users of property adjacent to or near agricultural operations of the inherent potential problems associated with such purchase or residential use.

**Guideline 4.** Detachment of prime agricultural, agricultural and/or open space lands should be encouraged if consistent with the SOI for that agency.

**Guideline 5.** Annexation for land uses in conflict with an existing agricultural preserve contract shall be prohibited, unless the Commission finds that it meets all the following criteria:

- a. The area is within the annexing agency's SOI.
- b. The Commission makes findings required by Gov. Code Section 56856.5.
- c. The parcel is included in an approved city specific plan.
- d. The soil is not categorized as prime agricultural land.
- e. Mitigation for the loss of agricultural land has been secured in the form of agricultural easements to the satisfaction of the annexing agency and the county.

- f. There is a pending, or approved, cancellation for the property that has been reviewed by the local jurisdictions and the Department of Conservation.
- g. The Williamson Act contract on the property has been non-renewed and final approval of the non-renewal has been granted.

**Guideline 6.** Property owners of prime agricultural and agricultural lands adjacent to land that is the subject of a LAFCO application shall be notified when an application is submitted to LAFCO.

**Guideline 7.** Regarding the timing and fulfillment of mitigation, if the mitigation measure is not in place prior to LAFCO's approval, the responsible entity (e.g., government agency, recognized non-profit organization) should provide LAFCO with information as to how the entity will ensure that the mitigation is provided at the appropriate time. Following LAFCO's approval, the responsible entity should provide LAFCO with an annual update on the status of agricultural mitigation fulfillment until the mitigation commitment is fulfilled.

### **OBSERVATIONS**

LAFCO identified other actions that are not within its purview but that if followed could reduce the impacts of new development on prime agricultural, agricultural, and open space lands. These are provided here so that applicants, other governmental agencies, advocacy organizations, and the public might consider them.

**Observation 1.** LAFCO will evaluate all applications that are submitted and complete. However, LAFCO notes that over a period the impact of new applications is likely to be reduced if applicants adopt a hierarchy that gives preference to those projects that have no impacts on prime agricultural, agricultural and/or open space lands, followed by those that minimize impacts, and lastly those that require mitigation of their impacts.

**Observation 2.** Undeveloped prime agricultural, agricultural and open space lands exist primarily in east Contra Costa County, as does much of the remaining open space; however, most of the historical conversion of this land occurred elsewhere in the county. In order to preserve the remaining land, a countywide effort involving funding may be appropriate.

**Observation 3.** Any jurisdiction that contains prime agricultural, agricultural and/or open space land can periodically review whether its land use and other regulations strike the proper balance between discouraging development and conversion of prime agricultural, agricultural and open space lands with encouraging economically viable agriculture-based businesses that will keep agriculture production high.

Final as amended – Dec 14, 2016; amended/updated November 14, 2018