

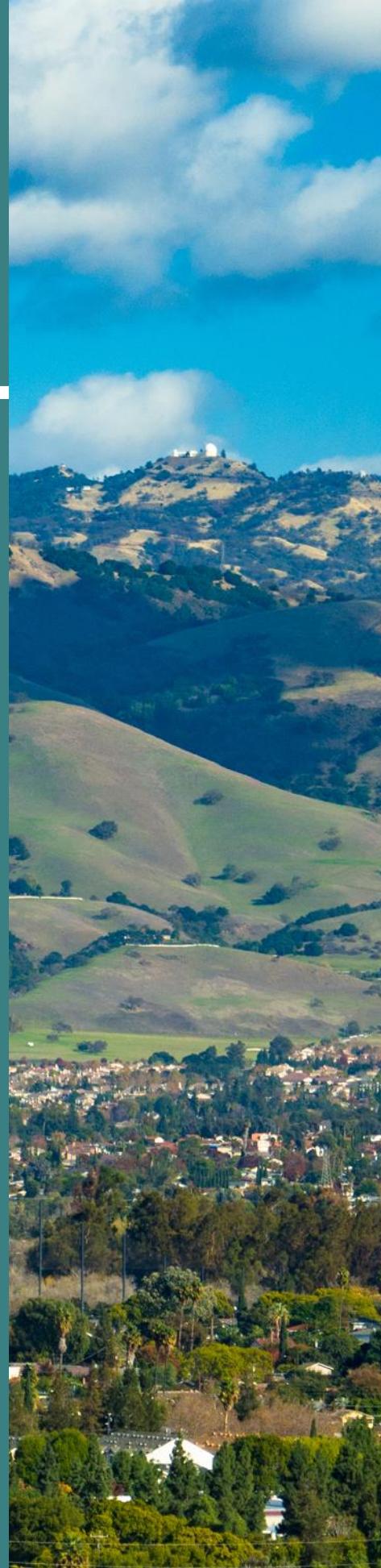
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# POLICIES AND PROCEDURES MANUAL

January 2026

SANTA  
CLARA  
**LAFCO**

Local Agency Formation Commission  
of Santa Clara County





# WELCOME

The Local Agency Formation Commission of Santa Clara County ("Santa Clara LAFCO") was formed and operates under the provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 ("CKH Act") (California Government Code Section 56000 et seq.). This law established LAFCOs as independent agencies, with one in each county in California, to implement State law and local policies relating to boundary changes for cities and most special districts, including spheres of influence amendments, urban service area amendments, incorporations, annexations, detachments, reorganizations, and other changes of organization. In this capacity, Santa Clara LAFCO serves as the boundary agency for cities and most special districts in Santa Clara County.

The CKH Act requires that each LAFCO adopt written policies and procedures. Santa Clara LAFCO has adopted by-laws, operational policies and procedures, policies for evaluating proposals, and administrative policies to facilitate its operations and to inform the public of its practices and procedures. They are compiled in this 4-Part Santa Clara LAFCO Policies and Procedures Manual which groups these various policies by subject matter for easy access. Part 1: Bylaws are policies relating specifically to the organizational structure and governance of Santa Clara LAFCO; Part 2: Operational Policies are policies and procedures guiding Santa Clara LAFCO's day-to-day operations; Part 3: Policies for Evaluating Proposals are policies related to the substantive evaluation of proposals submitted to Santa Clara LAFCO; and Part 4: Administrative Policies are Santa Clara LAFCO's remaining administrative policies.

This Manual supplements, rather than reiterates in entirety, State law. To fully understand LAFCO processes and procedures, applicable provisions of State law should be reviewed in conjunction with this document. Each part of the Manual is freestanding and can be amended without amending the entire Manual. The Santa Clara LAFCO Executive Officer is charged with ensuring that the Manual is up to date, and publicly available. To the extent any portion of the Manual conflicts with any provision of law, the applicable law always takes precedence.



# TABLE OF CONTENTS

## PART 1. LAFCO BYLAWS..... 1–0

### Chapter 1.1 ORGANIZATION..... 1.1–1

Section 1.1.1	Name of Commission.....	1.1–1
Section 1.1.2	Authority .....	1.1–1
Section 1.1.3	Mission .....	1.1–1

### Chapter 1.2 COMMISSIONERS AND STAFF .....

Section 1.2.1	Commission Composition .....	1.2–2
Section 1.2.2	Selection / Appointment of Commissioners.....	1.2–2
Section 1.2.3	Commissioners' Terms of Office.....	1.2–4
Section 1.2.4	Role of Commissioners.....	1.2–4
Section 1.2.5	Commissioner Pledge.....	1.2–5
Section 1.2.6	Orientation for New Commissioners .....	1.2–6
Section 1.2.7	Appointment of Officers .....	1.2–6
Section 1.2.8	Executive Officer and staff .....	1.2–7
Section 1.2.9	Delegation of Authorities to Executive Officer .....	1.2–7
Section 1.2.10	Legal Counsel .....	1.2–7

### Chapter 1.3 MEETING RULES AND REGULATIONS..... 1.3–1

Section 1.3.1	Schedule of Meetings .....	1.3–1
Section 1.3.2	Quorum and Action of Commission .....	1.3–1
Section 1.3.3	Disclosure of Ex Parte Communication .....	1.3–2
Section 1.3.4	Order of Business .....	1.3–2
Section 1.3.5	Meeting Agenda.....	1.3–3
Section 1.3.6	Clarification of Motion .....	1.3–4
Section 1.3.7	Meeting Minutes.....	1.3–4
Section 1.3.8	Recordings of Meetings .....	1.3–5
Section 1.3.9	Rosenberg's Rules of Order .....	1.3–5

### Chapter 1.4 FINANCIAL AND OTHER REPORTING .....

Section 1.4.1	Annual Audit.....	1.4–1
Section 1.4.2	Annual Report.....	1.4–1

## PART 2. OPERATIONAL POLICIES AND PROCEDURES ..... 1.4–1

### Chapter 2.1 APPLICATION PROCESSING PROCEDURES..... 2.1–1

Section 2.1.1	Deadline for Submission of Applications .....	2.1–1
Section 2.1.2	Application Fee Policies.....	2.1–1
Section 2.1.3	Application Deemed Complete or Incomplete .....	2.1–2
Section 2.1.4	Reconsideration of a LAFCO Resolution Making Determinations .....	2.1–2
Section 2.1.5	Processing Proposals Affecting More than One County .....	2.1–3
Section 2.1.6	Indemnification Policy .....	2.1–5
Exhibit 2.1-A:	Indemnification Agreement .....	2.1–6
Section 2.1.7	Lobbying Disclosure Policy .....	2.1–6
Section 2.1.8	Disclosure of Political Expenditures under the Political Reform Act .....	2.1–7

Section 2.1.9	Disclosure of Contributions to Commissioners from Parties and Participants under the Levine Act .....	2.1—8
Section 2.1.10	Conducting Authority Procedures .....	2.1—9

## **Chapter 2.2 LEGISLATIVE AND INTERGOVERNMENTAL POLICIES.....2.2—1**

Section 2.2.1	Communicating a Position on Proposed Legislation .....	2.2—1
Section 2.2.2	Providing Written Comments on Documents or Projects of Relevance to LAFCO .....	2.2—1
Section 2.2.3	Legislative Policies.....	2.2—2

## **Chapter 2.3 PROCEDURES FOR PREPARING AND PROCESSING ENVIRONMENTAL DOCUMENTS.....2.3—1**

Section 2.3.1	Introduction .....	2.3—1
Section 2.3.2	CEQA Procedures where Santa Clara LAFCO is the Responsible Agency .....	2.3—2
Section 2.3.3	CEQA Procedures where LAFCO is the Lead Agency .....	2.3—7
Section 2.3.4	Environmental Impact Report Process (CEQA Guidelines §15080-§15096).....	2.3—13
Exhibit 2.3-A:	Review by State Agencies .....	2.3—20
Exhibit 2.3-B:	Categorical and Statutory Exemptions .....	2.3—22
Exhibit 2.3-C:	Typical CEQA Time Limits .....	2.3—24

## **PART 3. POLICIES FOR EVALUATING PROPOSALS ..... 3—0**

### **Chapter 3.1 COUNTYWIDE URBAN DEVELOPMENT POLICIES.....3.1—1**

Section 3.1.1	Introduction .....	3.1—1
Section 3.1.2	History .....	3.1—2
Section 3.1.3	Countywide Urban Development Policies .....	3.1—3
Section 3.1.4	Implementation of the Countywide Urban Development Policies .....	3.1—3
Section 3.1.5	Lasting Benefits of the Countywide Urban Development Policies .....	3.1—5

### **Chapter 3.2 SPHERE OF INFLUENCE POLICIES ..... 3.2—1**

Section 3.2.1	Sphere of Influence (SOI) Defined .....	3.2—1
Section 3.2.2	Legislative History .....	3.2—2
Section 3.2.3	Development of City and Special Districts Spheres of Influence in Santa Clara County .....	3.2—3
Section 3.2.4	Current Role and Purposes of SOI Boundaries .....	3.2—4
Section 3.2.5	SOI Adoption and Amendment Policies .....	3.2—4

### **Chapter 3.3 URBAN SERVICE AREA POLICIES ..... 3.3—1**

Section 3.3.1	Introduction .....	3.3—1
Section 3.3.2	Urban Service Areas Defined .....	3.3—1
Section 3.3.3	Urban Service Area Amendment Procedural Policies .....	3.3—2
Section 3.3.4	Urban Service Area Amendment Policies and Evaluation Criteria.....	3.3—3
Exhibit 3.3-A:	Santa Clara LAFCO's Methodology for Preparing a Vacant Lands Inventory .....	3.3—14
Exhibit 3.3-B:	Santa Clara LAFCO's Guide for Preparing a Plan for Services .....	3.3—17

### **Chapter 3.4 ANNEXATION, DETACHMENT, AND REORGANIZATION POLICIES ..... 3.4—1**

Section 3.4.1	Introduction .....	3.4—1
Section 3.4.2	City Annexations, Detachments and Reorganizations .....	3.4—1
Section 3.4.3	Special District Annexations, Detachments, and Reorganizations .....	3.4—6

### **Chapter 3.5 OUT-OF-AGENCY SERVICE BY CONTRACT POLICIES ..... 3.5—1**

Section 3.5.1	Introduction .....	3.5—1
Section 3.5.2	Procedural Policies for Out-of-Agency Service by Contract Proposals.....	3.5—1
Section 3.5.3	Policies and Evaluation Criteria for Out of Agency Service by Contract Proposals .....	3.5—4
<b>Chapter 3.6 ISLAND ANNEXATION POLICIES.....</b>		<b>3.6—1</b>
Section 3.6.1	Introduction .....	3.6—1
Section 3.6.2	History of Unincorporated Urban Islands.....	3.6—1
Section 3.6.3	Legislative History .....	3.6—2
Section 3.6.4	Island Annexation Policies .....	3.6—3
<b>Chapter 3.7 AGRICULTURAL LAND PRESERVATION AND MITIGATION POLICIES .....</b>		<b>3.7—1</b>
Section 3.7.1	Introduction .....	3.7—1
Section 3.7.2	General Policies .....	3.7—2
Section 3.7.3	Definition of Prime Agricultural Lands .....	3.7—2
Section 3.7.4	Mitigation Recommendations .....	3.7—3
Section 3.7.5	Agricultural Conservation Entity Qualifications .....	3.7—5
Section 3.7.6	Timing and Fulfilment of Mitigation .....	3.7—5
Section 3.7.7	Plan for Mitigation .....	3.7—5
<b>Chapter 3.8 URBAN GROWTH BOUNDARIES POLICIES .....</b>		<b>3.8—1</b>
Section 3.8.1	Introduction .....	3.8—1
Section 3.8.2	Policies.....	3.8—2
<b>Chapter 3.9 INCORPORATION POLICIES .....</b>		<b>3.9—1</b>
Section 3.9.1	Introduction .....	3.9—1
Section 3.9.2	Certificate of Filing and Time Limitations.....	3.9—1
Section 3.9.3	Incorporation Processing Fees .....	3.9—2
Section 3.9.4	Incorporation Boundaries.....	3.9—3
Section 3.9.5	Services to Incorporation Area .....	3.9—3
Section 3.9.6	Special Districts Affected By Incorporation Proposal .....	3.9—4
Section 3.9.7	Timing and Initiation Of New City's Sphere Of Influence (SOI).....	3.9—4
Section 3.9.8	Environmental Review of Incorporation Proposals - CEQA .....	3.9—4
Section 3.9.9	Comprehensive Fiscal Analysis and Revenue Neutrality Negotiation Process .....	3.9—5
Section 3.9.10	Financial Assumptions and Fiscal Analysis Requirements .....	3.9—7
Section 3.9.11	Basis and Assumptions for Revenue Neutrality .....	3.9—8
Section 3.9.12	Effective Date of Incorporation .....	3.9—9
Exhibit 3.9-A:	Comprehensive Fiscal Analysis and Revenue Neutrality Negotiation Process .....	3.9—10
<b>Chapter 3.10 SERVICE REVIEW POLICIES .....</b>		<b>3.10—1</b>
Section 3.10.1	Introduction .....	3.10—1
Section 3.10.2	Service Review Defined.....	3.10—1
Section 3.10.3	Services to be Reviewed .....	3.10—2
Section 3.10.4	Geographic Scope of a Service Review .....	3.10—2
Section 3.10.5	Service Providers to be Included .....	3.10—2
Section 3.10.6	Timing of Service Reviews .....	3.10—3
Section 3.10.7	Service Review Funding .....	3.10—3
Section 3.10.8	Service Review Process .....	3.10—4
Section 3.10.9	Implementation of Service Review Recommendations .....	3.10—6
Section 3.10.10	Applicability of CEQA to Service Reviews.....	3.10—6
Section 3.10.11	Evaluation Categories for Service Review Determinations .....	3.10—7

Section 3.10.12 Adoption of Service Review Determinations .....	3.10—9
<b>PART 4. ADMINISTRATIVE POLICIES .....</b>	<b>4—0</b>
<b>Chapter 4.1 TRAVEL AND EXPENSE REIMBURSEMENT .....</b>	<b>4.1—1</b>
Section 4.1.1    Authorized Expenses .....	4.1—1
Section 4.1.2    Meeting Per Diem / Stipend .....	4.1—1
Section 4.1.3    LAFCO Commissioner Attendance at CALAFCO Conference .....	4.1—1
Section 4.1.4    Transportation, Lodging, Meals, and Other Incidental / Personal Expenses .....	4.1—2
Section 4.1.5    Expense Reporting .....	4.1—2
Section 4.1.6    Audits of Expense Reports .....	4.1—2
Section 4.1.7    Report to LAFCO .....	4.1—2
Section 4.1.8    Compliance with Laws .....	4.1—2
Section 4.1.9    Ethics Training .....	4.1—2
<b>Chapter 4.2 RECORDS RETENTION POLICY AND SCHEDULE.....</b>	<b>4.2—1</b>
Section 4.2.1    Introduction .....	4.2—1
Exhibit 4.2-A:    Records Retention Schedule .....	4.2—3
<b>Chapter 4.3 CONFLICT OF INTEREST CODE .....</b>	<b>4.3—1</b>
Exhibit 4.3-A:    Officials Who Manage Public Investments .....	4.3—2
Exhibit 4.3-B:    Disclosure Categories .....	4.3—4

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# PART 1. LAFCO BYLAWS



## CHAPTER 1.1 ORGANIZATION

### SECTION 1.1.1 NAME OF COMMISSION

Originally part of LAFCO Rules and Procedures  
Incorporated into LAFCO Bylaws: 04/02/2014  
Amended: 10/05/2016, 10/01/2025

The Local Agency Formation Commission, established in Santa Clara County pursuant to Chapter 1 of Part 1, Division 3, Title 5, of the Government Code, shall be known as the Local Agency Formation Commission of Santa Clara County (“LAFCO of Santa Clara County” or “Santa Clara LAFCO”), and hereinafter referred to as the “Commission.”

### SECTION 1.1.2 AUTHORITY

Adopted in LAFCO Bylaws: 04/02/2014  
Amended: 10/01/2025

LAFCO of Santa Clara County is governed by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Sections 56000 et seq. of the California Government Code (GC), as amended, and hereinafter referred to as the “CKH Act.” The provisions of these bylaws are not intended to preempt State law. In the event of a conflict between the provisions set forth in these bylaws and those set forth in the CKH Act, the provisions of the CKH Act shall prevail.

### SECTION 1.1.3 MISSION

Adopted in LAFCO Bylaws: 04/02/2014  
Amended: 02/04/2016, 10/01/2025

At its August 1, 2012 Meeting, the Commission adopted the following mission statement:

The mission of Santa Clara LAFCO is to promote sustainable growth and good governance in Santa Clara County by preserving agricultural lands and open space, curbing urban sprawl, encouraging efficient delivery of services, exploring and facilitating regional opportunities for fiscal sustainability, and promoting accountability and transparency of local agencies.

Santa Clara LAFCO will be proactive in raising awareness and building partnerships to accomplish this through its special studies, programs and actions.

## CHAPTER 1.2 COMMISSIONERS AND STAFF

### SECTION 1.2.1 COMMISSION COMPOSITION

Adopted in LAFCO Bylaws: 04/02/2014

The Commission shall consist of seven (7) regular commissioners and five (5) alternate commissioners.

### SECTION 1.2.2 SELECTION / APPOINTMENT OF COMMISSIONERS

Adopted in LAFCO Bylaws: 04/02/2014

Amended: 06/05/2019, 10/01/2025

1. The Commission membership categories and appointment procedures are as follows:
  - a. **County.** The Board of Supervisors shall appoint two regular commissioners and one alternate commissioner from the Board's membership to serve on the Commission. GC §56327(a)
  - b. **San Jose.** The City of San Jose shall appoint one regular commissioner and one alternate commissioner to serve on the Commission. Each appointee shall be the mayor or city council member. GC §56327(b)
  - c. **Cities.** The City Selection Committee shall appoint one regular commissioner and one alternate commissioner to serve on the Commission. Each appointee shall be a mayor or city council member from one of the County's other 14 cities. Such appointments shall be made in accordance with the procedure established by the City Selection Committee and described in the rules and regulations of that body. GC §56327(c)
  - d. **Special Districts.** Pursuant to GC §56327.3, in December 2012, the Commission adopted Resolution No. 2012-07, expanding its membership to include two special district members and one alternate special district member. GC §56332 requires the Independent Special Districts Selection Committee to appoint two regular commissioners and one alternate commissioner to serve on the Commission. Each appointee shall be elected or appointed members of the legislative body of an independent special district residing in the county but shall not be members of the legislative body of a city or county. On August 13, 2012, the Independent Special Districts Selection Committee of Santa Clara County adopted an alternative process for appointment of special district members to LAFCO whereby the Santa Clara Valley Water District appoints one special district member; and

the Independent Special Districts Selection Committee appoints the second member and an alternate member, to serve in place of the two regular special district members.

- e. **Public Member.** The other six commissioners shall appoint one public member and one alternate public member to serve on the Commission. Pursuant to GC §56327(d), each appointee shall not be a resident of a city which is already represented on the Commission. The appointees shall be Santa Clara County residents; and not currently an officer or employee of the county or any city or district with territory in the county. The appointees shall also not concurrently hold any elected or appointed office with a local government agency that makes or informs land use decisions while serving on the Commission.

The appointment of the public member and/or alternate public member shall be made in accordance with the following procedures:

The LAFCO Executive Officer shall notify the Commission in advance of the public member's and alternate public member's term expiration or when such seat(s) becomes vacant.

- i. The LAFCO Executive Officer shall notify the Commission in advance of the public member's and alternate public member's term expiration or when such seat(s) becomes vacant.
- ii. The LAFCO Executive Officer shall prepare a notice announcing the vacancy on the Commission and seeking applications to fill the vacancy.
- iii. The notice shall be posted on the LAFCO website and provided to each local agency within the county and to interested parties.
- iv. Among other things, the notice shall include information on the mission of LAFCO, and responsibilities of a LAFCO commissioner; and indicate the application filing period and submittal requirements.
- v. Interested applicants shall be required to submit a resume and a letter of interest outlining their reasons for wanting to serve as a member of the Commission.
- vi. The current public member and alternate public member shall be eligible to apply for an upcoming vacancy of the public member and/or the alternate public member positions.

- vii. The Commission shall not appoint someone to fill a vacancy until at least 21 days after the posting of the notice.
- viii. The Commission shall review applicants' resumes and letters of interest and shall conduct a group interview of the candidates at the next available LAFCO meeting, using questions prepared beforehand.
- ix. At the close of the group interview, the Commission shall by majority vote, appoint a public member and/or an alternate public member.

### **SECTION 1.2.3 COMMISSIONERS' TERMS OF OFFICE**

Originally part of LAFCO Rules and Procedures  
Incorporated into LAFCO Bylaws: 04/02/2014  
Amended: 10/01/2025

The term of office of each commissioner shall be four (4) years, expiring on May 31 in the year in which the term of the member expires. Any vacancy in the membership of the Commission shall be filled for the unexpired term by appointment by the body that originally appointed the member whose office has become vacant.

### **SECTION 1.2.4 ROLE OF COMMISSIONERS**

Adopted: 05/31/2006  
Incorporated into LAFCO Bylaws: 04/02/2014

- 1. While serving on the Commission, pursuant to GC §56331.4, all commissioners shall exercise their independent judgment on behalf of the interests of the public as a whole in furthering the purposes of the CKH Act and not solely the interests of the appointing authority.
- 2. In each member category, the alternate member shall serve and vote in place of a regular member who is absent or who disqualifies herself or himself from participating on a specific matter before the Commission at a regular / special commission meeting or in closed session.
- 3. All alternate members are expected and encouraged to attend and participate in all Commission meetings, even if the regular member(s) is (are) present. Alternate members may attend and participate in closed session meetings of the Commission. However, alternate members may not vote or make a motion when the regular member is present.
- 4. The Brown Act allows an exception from its requirements for the attendance of a majority of the members of the Board of Supervisors at noticed meetings of the

Commission, provided that a majority of the members of the Board of Supervisors do not discuss among themselves, other than as part of the Commission's scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the Board of Supervisors.

5. No person may disclose confidential information that has been acquired from LAFCO or information acquired by being present in a closed session meeting authorized pursuant to the Brown Act, to a person not entitled to receive it, unless the Commission authorizes disclosure of that confidential information.

#### **SECTION 1.2.5 COMMISSIONER PLEDGE**

Adopted in LAFCO Bylaws: 10/17/2018

1. All commissioners shall sign the Commissioner Pledge acknowledging their understanding of their unique role and responsibilities as a LAFCO commissioner.
2. All newly appointed commissioners shall receive and sign a copy of the pledge prior to their first LAFCO meeting.
3. Copies of the signed pledge shall be provided to the LAFCO Clerk and retained for LAFCO records. A copy of the signed pledge shall be provided to the commissioner.
4. The LAFCO Commissioner Pledge shall read as follows:

I, \_\_\_\_\_, as LAFCO Commissioner, pledge to uphold LAFCO's mission and mandate to promote sustainable growth and good governance in Santa Clara County.

As an appointed LAFCO Commissioner, I will represent the interests of the public as a whole, and not solely the interests of my appointing authority. In doing so, I will help LAFCO be a forward thinking agency that stewards public resources for the good of the whole county.

I will faithfully fulfill my duties as a LAFCO Commissioner, recognizing that LAFCO's work yields public benefits and that LAFCO has a unique role and responsibility in shaping the future of the county.

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Commissioner Signature

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Date

### **SECTION 1.2.6 ORIENTATION FOR NEW COMMISSIONERS**

Adopted: 10/01/2025

Staff shall provide an orientation for newly appointed commissioners prior to their first LAFCO meeting. The purpose of the orientation is to equip commissioners with the knowledge and context necessary to carry out their responsibilities effectively and in accordance with state law and local policies. The orientation program shall include, at a minimum, an overview of the history and purpose of LAFCO, its statutory mandate and adopted policies, the respective roles of commissioners and staff, the application review process, CALAFCO activities, and major recent or upcoming projects and initiatives.

### **SECTION 1.2.7 APPOINTMENT OF OFFICERS**

Originally part of LAFCO Rules and Procedures

Amended and incorporated into LAFCO Bylaws: 04/02/2014

Amended: 10/01/2025

1. The Commission shall annually appoint a Chairperson and Vice Chairperson for the next calendar year at the December meeting. The Chairperson and Vice Chairperson shall be appointed based on the following rotation schedule unless otherwise determined by the Commission:
  - a. Cities member
  - b. County member
  - c. San Jose member
  - d. Special Districts member
  - e. County member
  - f. Public member
  - g. Special Districts member
2. The Chairperson shall preside at all meetings of the Commission and the Vice Chairperson shall preside at meetings in the absence of the Chairperson.
3. In the event that the Chairperson and Vice Chairperson are absent from a Commission meeting at which a quorum is present, the voting members present shall appoint a member to act as Chair pro tempore for that meeting.

### **SECTION 1.2.8 EXECUTIVE OFFICER AND STAFF**

Originally part of LAFCO Rules and Procedures

Amended and incorporated into LAFCO Bylaws: 04/02/2014

Amended: 10/01/2025

1. The LAFCO Executive Officer shall be designated in accordance with the terms of the Memorandum of Understanding between the Commission and the County of Santa Clara.
2. The Executive Officer shall carry out all orders as instructed by the Commission. The Executive Officer shall prepare or cause to be prepared an agenda for each meeting and maintain a record of all proceedings as required by law and these bylaws, and as instructed by the Commission. The Executive Officer shall set all hearing dates, publish notices and shall oversee the performance of all other clerical and administrative services required by the Commission. In addition, the Executive Officer shall by direction of the Commission and in accordance with the terms of the Memorandum of Understanding between the Commission and the County of Santa Clara, hire other staff of the Commission.
3. LAFCO staff shall comply with the County Information Technology User Responsibility Statement.

### **SECTION 1.2.9 DELEGATION OF AUTHORITIES TO EXECUTIVE OFFICER**

Adopted: 10/01/2025

1. **Conducting Authority Functions and Responsibilities.** By Resolution No. 01-7, the Commission delegated the conducting authority functions and responsibilities to the Executive Officer pursuant to Government Code Section 57000.
2. **Small Contract Execution.** By Resolution 2019-03, the Commission delegated purchasing authority to the Executive Officer for execution of small contracts not to exceed \$5,000.

### **SECTION 1.2.10 LEGAL COUNSEL**

Adopted in LAFCO Bylaws: 04/02/2014

1. LAFCO Counsel shall be appointed by the Commission and shall serve at the pleasure of the Commission.
2. LAFCO Counsel shall attend all meetings of the Commission, give all requested advice on legal matters and represent the Commission in legal actions unless the Commission specifically makes other arrangements.

## CHAPTER 1.3 MEETING RULES AND REGULATIONS

### SECTION 1.3.1 SCHEDULE OF MEETINGS

Originally part of LAFCO Rules and Procedures

Amended and incorporated into LAFCO Bylaws: 04/02/2014

Amended: 04/01/2015, 10/05/2016, 10/07/2020, 10/01/2025

1. Regular Commission meetings are held on the first Wednesday of February, April, June, August, October, and December at 1:15 PM, in the Board Meeting Chambers at 70 West Hedding Street, San Jose, California, or in another designated location. As a courtesy, and technology permitting, members of the public may also attend by virtual teleconference. However, LAFCO cannot guarantee that the public's access to teleconferencing technology will be uninterrupted, and technical difficulties may occur from time to time. Unless required by the Brown Act, the meeting will continue despite technical difficulties for participants using the teleconferencing option.
2. The Commission shall establish a schedule of meetings for the following calendar year at its regular meeting in December.
3. Commission meetings are open to the public and the Commission welcomes public participation and input. Members of the public may provide written comment or attend LAFCO meetings to provide comment. Speakers are limited to three minutes. The Chair or the Commission by majority vote may further limit the time when appropriate.

### SECTION 1.3.2 QUORUM AND ACTION OF COMMISSION

Originally part of LAFCO Rules and Procedures

Amended and incorporated into LAFCO Bylaws: 04/02/2014

Amended: 06/04/2014

1. Four commissioners entitled to vote shall constitute a quorum.
2. The Commission shall act by resolution or Commission order. All final determinations of the Commission including on change of organization or reorganization proposals, USA or SOI amendments, out of agency service contracts, service reviews, shall be taken by resolution. The Commission minutes shall reflect the vote on all resolutions. The records and minutes of the Commission shall be signed by the Chairperson and LAFCO Clerk.
3. Commissioners are strongly encouraged to vote and not abstain from voting unless they are disqualified by law or because there is an appearance of conflict.

### **SECTION 1.3.3 DISCLOSURE OF EX PARTE COMMUNICATION**

Adopted in LAFCO Bylaws: 10/17/2018

1. Commissioners shall use their best efforts to track ex parte contacts pertaining to applications that are subject to a public hearing pursuant to the CKH Act.
2. Ex parte contacts include oral or written communications concerning applications that are subject to a public hearing pursuant to the Act which occur outside of a noticed public hearing. Contacts shall include phone calls, meetings, site visits, and written communications, including emails.
3. If an ex parte communication regarding the public hearing matter occurs, the Commissioner shall verbally disclose (1) the identity of the individual(s) with whom the Commissioner had contact; and (2) the substance of the information communicated. The commissioners shall verbally disclose written communication, unless such correspondence is forwarded to LAFCO staff in advance of the public hearing for inclusion in the agenda packet.
4. Following the closure of the public hearing and prior to a final decision, commissioners shall disclose any electronic or personal communication that has taken place pertaining to the item.
5. The LAFCO meeting agenda shall note public hearing items that require disclosure of ex parte communication.

### **SECTION 1.3.4 ORDER OF BUSINESS**

Originally part of LAFCO Rules and Procedures

Amended and incorporated into LAFCO Bylaws: 04/02/2014

Amended: 10/07/2020

1. The order of business at Commission meetings shall typically include the following items, unless otherwise directed by the Commission.
  - a. Roll Call
  - b. Public Comment – An opportunity for members of the public to address the Commission on matters not on the agenda, provided that the subject matter is within the jurisdiction of the Commission. No action may be taken on off-agenda items unless authorized by law. Speakers are limited to three minutes. The Chair or the Commission by majority vote may further limit the time when appropriate. All statements that require a response will be referred to staff for reply in writing.
  - c. Consideration of Minutes

- d. Consent Calendar – Consent calendar consists of those items recommended for approval, not requiring public hearing, and in the opinion of the staff, not involving major issues or problems. A commissioner, staff or member of the public, may request that an item be removed from the Consent Calendar for public discussion.
- e. Public Hearings
- f. Items for Action / Discussion
- g. Executive Officer's Report
- h. Pending Applications / Upcoming Projects
- i. Commissioner Reports – An opportunity for commissioners to comment on items not listed on the agenda, provided that the subject is within the jurisdiction of the Commission. No action or discussion by a quorum of the Commission may be taken on off-agenda items unless authorized by law.
- j. Newspaper Articles / Newsletters
- k. Written Correspondence
- l. Adjournment

#### **SECTION 1.3.5 MEETING AGENDA**

Adopted in LAFCO Bylaws: 02/07/2018

1. The Executive Officer shall prepare, for the Chairperson's review and approval, an agenda for each regularly scheduled meeting containing the specific items of business to be transacted.
2. All reports, materials, or other matters to be submitted to the Commission at its regular meeting, as part of the agenda packet, shall be delivered to the Executive Officer no later than 12:00 PM (noon) on the Monday, nine days preceding a Regular Commission Meeting.
3. During the Commissioner Reports portion of the meeting, any commissioner may request consideration of an agenda item for a future meeting, and such item shall be added to a future meeting if voted for by a majority of the Commission.
4. The agenda shall be posted on the bulletin board located outside of the County of Santa Clara Government Center in San Jose and shall be available for public inspection at the LAFCO office, no later than seventy-two (72) hours prior to the regular meeting and twenty-four (24) hours prior to a special meeting.

5. The agenda packet including staff reports and other meeting materials for a Regular Commission Meeting shall be posted on the LAFCO website and shall be available for public inspection at the LAFCO office, no later than seventy-two (72) hours prior to the regular meeting and twenty-four (24) hours prior to a special meeting.
6. Materials related to an agenda item submitted after the posting of the agenda shall be provided to commissioners and shall be available for public inspection at the LAFCO office and at the meeting.
7. No commissioner shall amend the agenda after the agenda has been posted. The Commission shall not take action on any items that do not appear on the posted agenda. However, the agenda may be amended to include items not appearing on the posted agenda, in accordance with GC §54954.2.

#### **SECTION 1.3.6 CLARIFICATION OF MOTION**

Originally part of LAFCO Rules and Procedures  
Incorporated into LAFCO Bylaws: 04/02/2014

Commissioners shall state motions in such a manner as to assure understanding of all parties as to the content of any terms and conditions to be placed on the Commission's action. It shall be the responsibility of the Chairperson to verify the wording of any motion with staff.

#### **SECTION 1.3.7 MEETING MINUTES**

Adopted in LAFCO Bylaws: 04/02/2014  
Amended: 10/01/2025

1. The Executive Officer shall cause a member of his / her staff to prepare the draft minutes of each meeting, which will be included on the agenda of the following meeting, for approval by the Commission.
2. Minutes of meetings will be action minutes. Action minutes will include final motions with votes. The minutes will also reflect the names of speakers under the public comment item, and reasons for any legally required abstentions from voting. Commission and staff discussion, comments, and questions and answers, will not be included in the minutes.

### **SECTION 1.3.8 RECORDINGS OF MEETINGS**

Adopted: 10/01/2025

All regular meetings of the Commission shall be audio or audio / video recorded and made available for public viewing, including live streaming when feasible. Special meetings of the Commission shall also be audio or audio / video recorded if the venue allows for such recordings.

### **SECTION 1.3.9 ROSENBERG'S RULES OF ORDER**

Adopted in LAFCO Bylaws: 04/02/2014

Except as herein otherwise provided, the proceedings of the Commission shall be governed by “Rosenberg’s Rules of Order” on all matters pertaining to parliamentary law. No resolution, proceeding, or other action of the Commission shall be invalid or the legality thereof otherwise affected by the failure of the Commission to observe or follow such rules.

## **CHAPTER 1.4** **FINANCIAL AND OTHER REPORTING**

### **SECTION 1.4.1 ANNUAL AUDIT**

Adopted: 10/01/2025

The Commission shall arrange for an annual audit of its financial statements to be conducted by an independent accounting firm (auditor). Audited financial statements, including the auditor's opinion thereon, shall be presented by the auditor to the Commission for consideration at a regular meeting. The final audit report shall be posted on the LAFCO website.

### **SECTION 1.4.2 ANNUAL REPORT**

Adopted: 10/01/2025

An Annual Report shall be prepared highlighting Santa Clara LAFCO's major accomplishments, activities, projects, and upcoming work items. The Annual Report shall be posted on the LAFCO website.



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# PART 2. OPERATIONAL POLICIES AND PROCEDURES



## CHAPTER 2.1 APPLICATION PROCESSING PROCEDURES

### SECTION 2.1.1 DEADLINE FOR SUBMISSION OF APPLICATIONS

Originally part of LAFCO Rules and Procedures

Amended and incorporated into LAFCO Bylaws: 04/02/2014

1. Deadlines for submitting applications will be no later than 5:00 PM on the Thursday immediately following a Regular LAFCO meeting in order to be considered at the next LAFCO meeting. Applications shall be submitted with correct fees on the appropriate forms and in the quantities required.
2. The Commission will not consider applications which have been submitted in violation of the deadline unless an emergency situation exists within the territory relating to the proposal which would affect public health and safety.
3. The Commission shall establish a schedule of application deadlines for the following calendar year at its regular meeting in December.

### SECTION 2.1.2 APPLICATION FEE POLICIES

Adopted in LAFCO Bylaws: 06/06/2018

Amended: 10/01/2025

1. The Commission may establish a schedule of fees and service charges for the processing of applications filed with the Commission, pursuant to GC §56383. The schedule of fees and service charges shall not exceed the estimated reasonable cost of providing the service for which the fee is charged.
2. Deposit fees are initial payments towards the actual cost of processing applications. Staff time spent on pre-application assistance will be counted towards the deposit. Actual costs include staff time, any consultant fees, special counsel legal services and miscellaneous costs such as noticing, copying etc. If actual costs are less than deposit, LAFCO will refund the difference to the applicant. If processing costs begin to exceed the deposit, additional fees are required. Commission approval will be conditional upon final payment within 35 days of LAFCO hearing date.
3. The Commission shall regularly review and amend as necessary the schedule of fees and service charges to help ensure an appropriate level of cost-recovery.
4. All fees / deposits shall be paid at the time of the application submittal and said application shall not be deemed complete until the required fees / deposits are received.

5. In order to achieve reasonable cost-recovery and not place an undue cost burden on its funding agencies (i.e., County, cities, special districts), the Commission will not generally provide fee waivers.
6. Consistent with GC §56383(d), the Commission may reduce or waive fees if it finds that payment of such fees would be detrimental to the public interest.
7. Any request for a fee reduction or waiver must be submitted in writing to the Executive Officer.

### **SECTION 2.1.3 APPLICATION DEEMED COMPLETE OR INCOMPLETE**

Adopted: 10/01/2025

Pursuant to GC §56658(c), within 30 days of receiving an application, the Executive Officer will determine whether the application is complete and acceptable for filing or whether the application is incomplete.

1. **Complete Application.** If the application is complete, the Executive Officer will issue a Certificate of Filing, confirming the application has met submission requirements and is accepted for filing.
2. **Incomplete Application.** An incomplete application will be issued an Incomplete Letter, and the applicant will be notified of the unsatisfied requirements.
3. **Inactive Application.** If the application remains incomplete for a period of twelve (12) months from the date of application submittal deadline without substantial progress being made toward its completion, the application will be closed without prejudice and may be subject to a refund if any portion of the application fee remains unused. A new application and fee will be required if the applicant chooses to resubmit such a closed application.

### **SECTION 2.1.4 RECONSIDERATION OF A LAFCO RESOLUTION MAKING DETERMINATIONS**

Adopted in LAFCO Bylaws: 10/17/2018

1. Notwithstanding Section 1.3.9 (Rosenberg's Rules of Order), any request for reconsideration of a resolution making determinations shall be processed in accordance with the CKH Act, specifically GC §56895, and not Rosenberg's Rules of Order.
2. If the LAFCO Executive Officer receives a request for reconsideration pursuant to GC §56895(a) of the CKH Act, the request shall state the specific modification to the resolution being requested and shall state what new or different facts that

could not have been presented previously are claimed to warrant the reconsideration.

3. Upon receipt of a timely request for reconsideration, the Commission shall first determine whether there are new or different facts that could not have been presented previously.
4. If the Commission determines that there are no new or different facts that could not have been presented previously, the Commission shall not reconsider the matter and shall disapprove the request for reconsideration.
5. If the Commission determines that there are new or different facts that could not have been presented previously, the Commission shall then consider the request and receive any oral or written testimony and at the conclusion of its consideration, the Commission may approve with or without amendment, wholly, partially, or conditionally, or disapprove the request for reconsideration.

#### **SECTION 2.1.5 PROCESSING PROPOSALS AFFECTING MORE THAN ONE COUNTY**

Adopted: 12/11/2002

Amended: 08/06/2025

1. **Introduction.** GC §56066 sets forth that the county having all or the greater portion of the assessed value, as shown on the last equalized assessment roll of the county or counties, of all taxable property within a district or districts for which a change of organization or reorganization or a sphere of influence is proposed, is the principal county. GC §56123 further provides that the LAFCO of the principal county shall have jurisdiction over all boundary changes affecting that district, including changes of organization involving territory in another county. Pursuant to GC §56124, exclusive jurisdiction shall be vested in the LAFCO of the principal county, unless the principal county vests jurisdiction in the LAFCO of another affected county, and both LAFCOs agree to transfer of jurisdiction.

Santa Clara LAFCO recognizes the need to collaborate on a regional level when considering a change of organization of a district that affects another County. In order to further this collaboration and assure thorough and consistent consideration of applications affecting more than one county, this Commission adopts the following procedures for processing applications involving multi-county districts.

2. **Transfer of Jurisdiction to a LAFCO of an Affected County.** When requested by a LAFCO of an affected county, Santa Clara LAFCO will consider and determine on a case-by-case basis whether it is appropriate to transfer jurisdiction to the LAFCO of the affected County.
3. **Applications Affecting More than One County When Santa Clara LAFCO is Principal LAFCO**
  - a. Applications affecting the boundaries of a district for which Santa Clara LAFCO is principal LAFCO will be submitted to Santa Clara LAFCO including instances in which the subject territory is located in another county. Prior to application, applicants should meet with staff of principal LAFCO regarding process and application requirements. Applicant must comply with application requirements of both LAFCOs.
  - b. Upon receipt of the application involving territory in another county, staff will immediately forward a copy of the application to the LAFCO of the county containing the subject territory.
  - c. The commission of the principal county will also provide notice to the chair, each board member, and the executive office of all affected agencies of any proceedings, actions or reports on the proposed change of organization.
  - d. Santa Clara LAFCO staff will consult with the staff of the affected LAFCO and affected agencies in the county containing territory in order to gather data for the Executive Officer's report and recommendation.
  - e. The application will be scheduled for hearing by Santa Clara LAFCO so that the LAFCO of the affected county has had time to review the application and submit a written recommendation to be included in the Executive Officer's report for Santa Clara LAFCO consideration at a public hearing.
  - f. At the hearing, the Commission will consider the Executive Officer's report, the recommendation of the LAFCO containing the subject territory, and the comments of affected individuals and agencies in making its determination.
  - g. Following the conclusion of the hearing, the Executive Officer will forward any resolutions and written report of Commission action to the chair, each board member, the executive office of all affected agencies and the LAFCOs of the affected county.

**4. Applications Affecting More Than One County When Santa Clara LAFCO Is Not Principal LAFCO**

Upon receipt by Santa Clara LAFCO of a notice and referral from a LAFCO of another county of an application for change of organization affecting territory in Santa Clara County, staff will place the application and report and recommendation on Santa Clara LAFCO's next possible agenda so that the Commission may consider the application and forward a recommendation to the LAFCO of the principal county. Said applications will be processed and a staff report will be prepared consistent with Santa Clara LAFCO's Policies and Procedures.

**SECTION 2.1.6 INDEMNIFICATION POLICY**

Adopted: 06/03/2009

Amended: 08/06/2025

To further good government practices and policies of the Commission, and protect the Commission from the costs associated with legal challenges, it is the policy of this Commission that:

1. As a condition of submitting any application for action or determination by the Commission, the applicant(s) shall submit a signed agreement in which the applicant(s) agree to indemnify, defend and hold harmless the Commission, its agents, officers, attorneys, and employees from any legal challenges or appeals brought to challenge approval of their application in the form prescribed in *Exhibit 2.1-A*, attached hereto and incorporated herein by reference. In the event a lawsuit is brought to challenge the approval of an application by the Commission, the Commission shall notify the applicant(s) promptly and no later than three (3) business days after the Commission has been served.
2. The Executive Officer shall not issue a Certificate of Filing for an application if an indemnification agreement in the form prescribed in *Exhibit 2.1-A* has not been executed and submitted to the Executive Officer by the applicant(s).

**EXHIBIT 2.1-A: INDEMNIFICATION AGREEMENT**

As a condition of submitting any application for consideration by the Commission, Applicant and its successors and assigns, shall indemnify, defend and hold harmless, Santa Clara LAFCO and its officials, officers, employees, agents, representatives, contractors, and assigns from and against any and all claims, demands, liability, judgments, damages (including consequential damages), awards, interest, attorneys' fees, costs, and expenses of whatsoever kind or nature, at any time arising out of, or in any way connected with, any legal challenges to or appeals associated with, LAFCO's approval of the Application (collectively, "Indemnification Costs"). Applicant's obligation to indemnify, defend and hold harmless Santa Clara LAFCO and its officials, officers, employees, agents, representatives, contractors, and assigns under this Agreement shall apply regardless of fault, to any acts or omissions, or negligent conduct, whether active or passive, on the part of the Applicant, Santa Clara LAFCO, or its officials, officers, employees, agents, representatives, contractors or assigns. Applicant's obligation to defend Santa Clara LAFCO or its officials, officers, employees, agents, representatives, contractors, and assigns under this Agreement shall be at Applicant's sole expense, and using counsel selected or approved by Santa Clara LAFCO in Santa Clara LAFCO's sole discretion. In the event of a lawsuit, Applicant will be notified by Santa Clara LAFCO within three (3) business days of being served.

APPLICANT SIGNATURE: \_\_\_\_\_ Date: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_ Title: \_\_\_\_\_

**SECTION 2.1.7 LOBBYING DISCLOSURE POLICY**

Adopted: 02/14/2001

1. **Definition of "lobbyist".** A lobbyist is an individual or entity who is compensated and who communicates directly with regular or alternate LAFCO commissioners, and/or the Executive Officer to influence, on behalf of his client or employer, the Commission's or the Executive Officer's action. Communication includes ex parte communications as well as presentations at Commission meetings. This definition does not include:
  - a. Any elected public official acting in his official capacity, or any employee of governmental agency acting in the scope of his / her employment.
  - b. Any employee of a newspaper or other periodical of general circulation, or radio or television station, acting within the scope of their employment.
2. **Filing Schedule.** As allowed for under GC §56300(c), any person or entity meeting this definition and who is lobbying the Commission or Executive Officer in regard to an application before LAFCO must file a declaration prior to the

hearing on the LAFCO application or at the time of the hearing if that is the initial contact. In addition to submitting a declaration, any lobbyist speaking at the LAFCO hearing must so identify themselves as lobbyists and identify on the record the name of the person or entity making payment to them.

Additionally, every applicant shall file a declaration under penalty of perjury listing all lobbyists that they have hired to influence the action taken by LAFCO on their application. This affidavit is due at the time of application filing and is to be updated, if necessary, one week prior to the hearing date of the application. The declaration shall be made on a form provided by LAFCO and shall include the name of the lobbyist, the name of the application of interest and the name of the person or entity paying the lobbyist in regard to the application. The declaration shall be signed under penalty of perjury.

3. **Filing Office.** Declarations shall be submitted to the LAFCO Executive Officer and shall become part of the LAFCO application file.
4. **Enforcement.** Failure of an applicant or a lobbyist to file the declaration, or to identify oneself as a lobbyist prior to speaking on a matter, shall result in the inability of the Commission to take action on the application. In addition, failure to file the declaration or the filing of an erroneous declaration shall result in a penalty of \$500.00, said assessment to be deposited in the LAFCO budget.
5. **Effective Date.** These policies shall apply to all LAFCO applications submitted for filing after April 11, 2001.

#### **SECTION 2.1.8 DISCLOSURE OF POLITICAL EXPENDITURES UNDER THE POLITICAL REFORM ACT**

Adopted: 08/07/2013

Pursuant to GC §56100.1, §56300, §56700.1, §57009 and §81000 et seq., any person or combination of persons who directly or indirectly contribute(s) a total of \$1,000 or more or expend(s) a total of \$1,000 or more in support of or in opposition to specified LAFCO proposals or proceedings, which generally include proposed reorganizations or changes of organization, may be required to comply with the disclosure requirements of the Political Reform Act beginning with GC §81000(See also, GC §84250 et seq.). These requirements contain provisions for making disclosures of contributions and expenditures at specified intervals. More information on the scope of the required disclosures is available at the web site of the FPPC: [www.fppc.ca.gov](http://www.fppc.ca.gov). Questions regarding FPPC material, including FPPC forms, should be directed to the FPPC's advice line at 1-866-ASK-FPPC (1-866-275- 3772).

## **SECTION 2.1.9 DISCLOSURE OF CONTRIBUTIONS TO COMMISSIONERS FROM PARTIES AND PARTICIPANTS UNDER THE LEVINE ACT**

Adopted: 10/01/2025

LAFCOs are subject to disclosure and prohibition requirements detailed in GC §84308, and the Regulations of the Fair Political Practices Commission (FPPC), §18438 et seq. The following is a summary of those provisions in GC §84308:

1. No LAFCO commissioner shall accept, solicit, or direct a contribution of more than \$500 from any party, or a party's agent; or any participant or the participant's agent if the commission knows or has reason to know that the participant has a financial interest, while a LAFCO proceeding is pending, and for 12 months following the date a final decision is rendered by LAFCO.
2. Prior to rendering a decision on a LAFCO proceeding, any LAFCO commissioner who received a contribution of more than \$500 within the preceding 12 months from a party or participant shall disclose that fact on the record of the proceeding. If a commissioner receives a contribution which would otherwise require disqualification returns the contribution within 30 days from the time the commissioner knows or should have known, about the contribution and the proceeding, the commissioner shall be permitted to participate in the proceeding.
3. A party to a LAFCO proceeding shall disclose on the record of the proceeding any contribution of more than \$500 within the preceding 12 months by the party, or the party's agent, to a LAFCO commissioner. For forms, visit the LAFCO website at [SantaClaraLAFCO.org](http://SantaClaraLAFCO.org).
4. No party, or the party's agent and no participant, or the participant's agent, shall make a contribution of more than \$500 to any LAFCO commissioner during the proceeding and for 12 months following the date a final decision is rendered by LAFCO.
5. Definition of Terms
  - a. "Party" is defined as any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use. [GC §84308(a)(1)]
  - b. "Participant" is defined as a person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit or other entitlement for use and who has a financial interest in the decision. A person actively supports or

opposes a particular decision in a proceeding if he or she lobbies in person the officers, or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency. [GC §84308(a)(2)]

- c. “Agent” is defined as a person who represents a party or a participant, in connection with a proceeding in connection with a proceeding, as long as the person represents that party or participant for compensation and appears before or otherwise communicates with an agency for the purpose of influencing the proceeding on behalf of a party or participant. Agent includes lobbyist. If an individual acting as an agent is also acting in his or her capacity as an employee or member of a law, architectural, engineering, consulting firm, or a similar business entity or corporation, both the business entity or corporation, and the individual are “agents”. [GC §84308(h)(1)-(3)]
- d. To determine whether a campaign contribution of more than \$500 has been made by a person or his or her agent, the contributions of an agent shall not be aggregated with contributions from a party or participant. [GC §84308(g)]

#### **SECTION 2.1.10 CONDUCTING AUTHORITY PROCEDURES**

Adopted: 04/11/2001

Amended: 10/01/2025

- 1. Effective January 1, 2001, the CKH Act established LAFCO as the conducting authority for all proposals requiring protests proceedings.
- 2. In the case of city-conducted annexations, pursuant to GC §56757(b), the city council shall be the conducting authority for protest proceedings. The city proceedings shall be conducted as nearly as practicable in accordance with the CKH Act and LAFCO procedures.
- 3. By Resolution No. 01-7, the Commission delegated all duties, functions and responsibilities of the conducting authority to the Executive Officer pursuant to GC §57000.
- 4. Unless protest proceedings are waived consistent with the CKH Act, a protest hearing will be held following the Commission’s approval of a proposal. The following are procedural guidelines for the conduct of a protest proceeding:
  - a. Within 35 days following adoption of the Commission’s resolution making determinations, the Executive Officer shall set the proposal for a protest hearing and give notice of that hearing.

- b. The date of the protest hearing must be within 60 days, but not less than 21 days, from the date the notice of hearing is given (GC §57002). The hearing shall not be held prior to the expiration of the 30-day period specified in GC §56895(b) during which a reconsideration could be requested.
- c. The notice of hearing shall be mailed, published, and posted pursuant to GC §57025.
- d. The notice shall contain information as specified in GC §57026.
- e. Pursuant to GC §57050, the protest hearing shall be held on the date and at the time specified in the notice given by the Executive Officer. The hearing may be continued from time to time but may not exceed 60 days from the date specified for the hearing in the notice.
- f. At the protest hearing, pursuant to GC §57050(b), the Executive Officer shall summarize the Commission's resolution making determinations and shall hear and receive any oral or written protests, objections, or evidence that is made, presented or filed.
- g. Written protests may be filed with LAFCO at any time prior to the conclusion of the protest hearing and must include all the required information pursuant to GC §57051. Anyone who has filed a written protest may withdraw that protest prior to the conclusion of the hearing.
- h. If written protests have been filed, pursuant to GC §57052, within 30 days of the protest hearing, the Executive officer shall determine the value of written protests filed and not withdrawn.
- i. To determine the value of the written protests filed and not withdrawn, the Executive Officer shall cause the names of the signers of the protests to be compared with either the voters' register in the County Registrar of Voters Office (GC §56707) or the names of the owners of land on the most recent assessment roll pursuant to GC §56708 and GC §56710.
- j. Upon determination of the value of written protests filed and not withdrawn, the Executive Officer shall take one of the following actions, depending on the nature of the change of organization and the level of protest:
  - i. Issue a Certificate of Termination, terminating proceedings. (GC §57179)
  - ii. Adopt a resolution making determinations and ordering a change of organization without an election.

- iii. Adopt a resolution making determinations and ordering a change of organization subject to confirmation by the voters.
- k. If election is required, the Executive Officer shall, pursuant to GC §57000(d), inform the board of supervisors and the election official of the affected county, or the city council and elections official of the affected city and request the legislative body to direct the elections official to conduct the necessary election. GC §57000(e) requires a Board of Supervisors or a City Council to perform specified tasks directly related to the calling of an election.
- l. After ordering a change of organization without an election or confirming an order for a change of organization after confirmation by the voters, the Executive Officer shall file a Certificate of Completion pursuant to GC §57200(a).
- m. The Executive Officer shall inform the Commission of the action taken as a result of the protest proceedings. The Executive Officer shall include it as an Information Only item with no action required on the Commission's next agenda.
- n. In the case of a city conducted annexation, after ordering a change of organization without an election or confirming an order for a change of organization after confirmation by the voters, the city shall forward the necessary paperwork to the Executive Officer for finalization.

## CHAPTER 2.2 LEGISLATIVE AND INTERGOVERNMENTAL POLICIES

### SECTION 2.2.1 COMMUNICATING A POSITION ON PROPOSED LEGISLATION

Adopted in LAFCO Bylaws: 04/06/2022

1. The Commission shall adopt legislative policies to guide its actions related to legislative matters. Following adoption of the legislative policies, the Commission shall, at a minimum, annually review the legislative policies of the California Association of LAFCOs (CALAFCO) and its own legislative policies, and revise its own policies, as needed.
2. The Executive Officer shall provide to the full Commission for its consideration and action, any proposed legislation of relevance to LAFCO including a recommended position, as appropriate.
3. In situations when proposed legislation of relevance to LAFCO cannot be considered by the full Commission due to timing:
  - a. The Executive Officer shall consult with LAFCO Counsel and LAFCO Chair (or Vice-Chair if the Chair is unavailable) and prepare a position letter, consistent with current adopted legislative policies of LAFCO.
  - b. At their discretion, the Chair (or Vice-Chair if the Chair is unavailable) may sign the position letter on behalf of LAFCO. The letter shall not be submitted without said signature.
  - c. The Executive Officer shall provide a copy of the written comments to the full Commission.
  - d. The next regular LAFCO meeting agenda shall include an item that allows the Commission to discuss the proposed legislation and submitted comments.

### SECTION 2.2.2 PROVIDING WRITTEN COMMENTS ON DOCUMENTS OR PROJECTS OF RELEVANCE TO LAFCO

Adopted in LAFCO Bylaws: 04/06/2022

1. The Executive Officer is authorized to provide written comments on documents or projects of relevance to LAFCO including but not limited to CEQA documents and local/regional/state agency plans, policies, and programs. Such comments shall refer to, and be consistent with, currently adopted LAFCO policies and State law. The Executive Officer shall provide a copy of the submitted written

comments to the full Commission and include them in the next regular LAFCO meeting agenda.

2. However, on Regional Housing Needs Assessment (RHNA) or other similar projects the Executive Officer shall present the matter to the Chair (or Vice-Chair if the Chair is unavailable) to determine at their discretion whether or not the matter should be agendized for the Commission's consideration prior to submittal of comments.

### **SECTION 2.2.3 LEGISLATIVE POLICIES**

Adopted: 04/06/2022

Amended: 10/01/2025

These legislative policies shall guide Santa Clara LAFCO's actions related to legislative matters. On an annual basis, as needed, LAFCO shall review these policies and the CALAFCO Legislative Policies, to consider any potential revisions.

#### **1. LAFCO Purpose and Authority**

- a. Support legislation that enhances LAFCO authority and powers to carry out the legislative findings and authority in Government Code §56000 et seq. Oppose legislation that diminishes LAFCO authority.
- b. Support authority for each LAFCO to establish local policies to apply GC §56000 et seq., based on local needs and conditions. Oppose any limitations to that authority.
- c. Oppose additional LAFCO responsibilities that require expansion of current local funding sources. Oppose unrelated responsibilities that dilute LAFCO ability to meet its primary mission.
- d. Support alignment of responsibilities and authority of LAFCO and regional agencies that may have overlapping responsibilities in orderly growth, agricultural and open space preservation, and municipal service delivery. Oppose legislation or policies that create conflicts or hamper those responsibilities.
- e. Oppose grants of special status to any individual agency or proposal to circumvent the LAFCO process.
- f. Support individual commissioner responsibility that allows each commissioner to independently vote his or her conscience on issues affecting his or her own jurisdiction.

**2. LAFCO Organization**

- a. Support LAFCO independence from local agencies.
- b. Oppose the re-composition of any LAFCO to create special seats and recognize the importance of balanced representation provided by cities, the county, the public, and special districts in advancing the public interest.
- c. Support representation of special districts on all LAFCOs in counties with independent districts and oppose removal of special districts from any LAFCO.
- d. Support communication and collaborative decision-making among neighboring LAFCOs when growth pressures and multicounty agencies extend beyond an individual LAFCO's boundaries.

**3. Agricultural and Open Space Protection**

- a. Support legislation that clarifies LAFCO authority to identify, encourage and ensure the preservation of agricultural and open space lands.
- b. Encourage a consistent definition of agricultural and open space lands.
- c. Support policies that encourage cities, counties, and special districts to discourage development on all types of agricultural lands, including prime agricultural lands and open space lands.
- d. Support policies and tools that protect all types of agricultural lands, including prime agricultural lands and open space lands.
- e. Support the continuance of the Williamson Act and restoration of program funding through State subvention payments.

**4. Orderly Growth**

- a. Support the recognition and use of spheres of influence as a planning tool pertaining to growth and development, and the preservation of agricultural and open space lands.
- b. Support recognition of LAFCO spheres of influence by other agencies involved in determining and developing long-term growth and infrastructure plans.
- c. Support orderly boundaries of local agencies and the elimination of islands within the sphere of influence and boundaries of agencies.
- d. Support communication among cities, counties, special districts, stakeholders and affected parties through a collaborative process that

resolves service, infrastructure, housing, land use, and fiscal issues, prior to application to LAFCO.

- e. Support cooperation between counties and cities on decisions related to development within a city's designated sphere of influence.
- f. Support cooperation between cities and special districts on decisions related to development within city and district spheres of influence that overlap.
- g. Support the recognition of extreme natural disasters and disaster preparedness when considering growth and service delivery issues.

## 5. Service Delivery and Local Agency Effectiveness

- a. Support the use of LAFCO resources to review Regional Transportation Plans, with a focus on sustainable communities strategies and other growth plans to ensure reliable services, orderly growth, and conformity with LAFCO's legislative mandates. Support efforts that enhance meaningful collaboration between LAFCOs and regional planning agencies.
- b. Support LAFCO authority as the preferred method of local governance. Support the availability of LAFCO tools that provide options for local governance and efficient service delivery, including the authority to impose conditions that assure a proposal's conformity with LAFCO's legislative mandates.
- c. Support a deliberative and open process for the creation or reorganization of local governments that evaluates the proposed new or successor agency's long-term financial viability, governance structure and ability to efficiently deliver proposed services.
- d. Support the availability of tools for LAFCO to insure equitable distribution of revenues to local government agencies consistent with their service delivery responsibilities.
- e. Support legislation and collaborative efforts among agencies and LAFCOs that encourage opportunities for sharing of services, staff, and facilities to provide more efficient and cost-effective services.

## **CHAPTER 2.3**

# **PROCEDURES FOR PREPARING AND PROCESSING ENVIRONMENTAL DOCUMENTS**

Adopted: 02/12/2003

Amended: 10/01/2025

### **SECTION 2.3.1 INTRODUCTION**

The California Environmental Quality Act (CEQA) (Public Resources Code (PRC) §21080 and the CEQA Guidelines §15020) require all California public agencies to comply with the environmental review requirements set forth in the statute and CEQA Guidelines.

As an independent public agency of the State of California, Santa Clara LAFCO is subject to the requirements of CEQA. LAFCO may function as "Lead Agency" (CEQA Guidelines §15050) where it undertakes primary responsibility for environmental review, or LAFCO may function as a "Responsible Agency" (CEQA Guidelines §15096) where its CEQA role is typically limited to review of environmental documentation prepared by another public agency.

CEQA Guidelines §15022 requires each agency to develop local procedures for complying with the requirements of CEQA. These rules are adopted pursuant to that authority. As to matters not specifically covered by these procedures, the procedures set forth in the CEQA Guidelines shall control.

CEQA only applies to projects that require discretionary approval by a public agency. Discretionary approval requires use of judgment or subjective criteria on the part of the approving agency. CEQA does not apply to non-discretionary (ministerial) projects. A "project" is defined as the whole of an action that has the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment [CEQA Guidelines §15378(a)]. These procedures will be used when preparing and processing environmental documents for Santa Clara LAFCO projects, including but not limited to:

1. Changes of organization or reorganizations,
2. Sphere of Influence (SOI) Establishment, and SOI Updates and Amendments,
3. Urban Service Area Amendments,
4. Out of Agency Service Contracts,
5. Incorporations of Cities,
6. Formations of Special Districts, and

7. All other discretionary projects as defined in PRC §21065 and CEQA Guidelines §15378.

CEQA requires that a Responsible Agency or Lead Agency conduct environmental assessment and prepare environmental documentation consistent with the specific time limits established in the CEQA Guidelines. A summary of typical time limits is provided in *Exhibit 2.3-C*.

### **SECTION 2.3.2 CEQA PROCEDURES WHERE SANTA CLARA LAFCO IS THE RESPONSIBLE AGENCY**

The Responsible Agency is a public entity, other than the Lead Agency, which has responsibility for carrying out or approving a project (PRC §21069). When a project is proposed for which Santa Clara LAFCO will act as the Responsible Agency, ensure that the Lead Agency receives any information needed to prepare an environmental document that provides full disclosure of Santa Clara LAFCO's issues, and permits informed decision. Comments will be provided consistent with the requirements and timelines contained in PRC §21080.3, §21080.4, and CEQA Guidelines §15096. Procedures for processing of environmental documents for LAFCO proposals are included in this Chapter.

#### **1. Participation in Lead Agency Environmental Review Process**

- a. **Response to Consultation.** When Santa Clara LAFCO is a Responsible Agency, it will respond to consultation requests by the Lead Agency in order to assist the Lead Agency in preparing adequate environmental documents for the project. As part of the consultation process, LAFCO will:
  - i. Explain its reasons for recommending whether the Lead Agency should prepare an Environmental Impact Report (EIR) or a Negative Declaration (ND). If LAFCO disagrees with the Lead Agency's proposal to prepare a ND, LAFCO will identify the significant environmental impacts on which it bases its disagreement and recommend to the Lead Agency either that an EIR be prepared or that the project be modified to eliminate the possible significant impacts.
  - ii. As soon as possible, but not longer than 30 days after receiving a Notice of Preparation from the Lead Agency, send a written reply by certified mail to the Lead Agency specifying the scope and content of the environmental information which would be germane to Santa Clara LAFCO's statutory responsibilities as the Responsible Agency in connection with the proposed project.

- iii. Attend any meetings requested by the Lead Agency or by Santa Clara LAFCO to discuss the scope and content of the EIR.
- b. **Comments on Draft EIRs and NDs.** Review and comment on draft EIRs and NDs that have been released for public comment for projects for which Santa Clara LAFCO will later be asked to issue approvals. Comments should focus on any shortcomings in the EIR, the appropriateness of using a ND, or on additional alternatives or mitigation measures which the EIR should include. The comments shall be limited to comments regarding those project activities which are within Santa Clara LAFCO's area of expertise, which would be required to be carried out or approved by LAFCO, or which will be subject to the exercise of powers by LAFCO. Follow up with the Lead Agency as to LAFCO comments to ensure that any information requested is adequately included in the final environmental document.
- c. **Adequacy of EIR or Negative Declaration [CEQA Guidelines §15096(e)-(f)].** If Santa Clara LAFCO believes that the final EIR or ND prepared by the Lead Agency is not adequate for its use as the Responsible Agency, it must either:
  - i. File a CEQA lawsuit within 30 days after the Lead Agency Files a Notice of Determination or be deemed to have waived any objection to the adequacy of the EIR or ND;
  - ii. Prepare a subsequent or supplemental EIR if permissible under CEQA Guidelines §15162 or §15163; or
  - iii. Assume the Lead Agency role as provided in CEQA Guidelines §15052(a)(3).
- d. **LAFCO Consideration of an EIR or Negative Declaration [CEQA Guidelines §15096(f)-(g)].**
  - i. Before reaching a decision on an approval related to a project for which a Lead Agency has certified an EIR or adopted a ND, the Commission must consider the environmental effects of the project as shown in the EIR or ND.
  - ii. When issuing an approval, the Commission must acknowledge that it reviewed and considered the information in the EIR or ND.
  - iii. Santa Clara LAFCO, as a Responsible Agency, has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which LAFCO proposes to carry out, finance, or approve.

- iv. When an EIR has been prepared for a project, if the Commission finds that any alternatives or mitigation measures within its powers are feasible and would substantially lessen or avoid a significant effect of the project, it may not approve the project as proposed but must adopt those mitigation measures or alternatives. Where another public agency has exclusive responsibility for a mitigation measure, the Commission can find under PRC §21081(a) that the measure is within the responsibility and jurisdiction of another public agency and has been, or can and should be, adopted by that other agency.
- v. With respect to a project which includes housing development, the Commission shall not reduce the proposed number of housing units as a mitigation measure if it determines that there is another feasible specific mitigation measure available that will provide a comparable level of mitigation.

e. **Adopt Findings and Statement of Overriding Considerations [CEQA Guidelines §15096 (h)-(i)].** When Santa Clara LAFCO is the Responsible Agency, before it can issue an approval for a project for which an EIR was prepared and certified, the Commission must:

- i. Adopt findings for those effects within the scope of LAFCO's jurisdiction. The Commission must identify those significant effects and make the findings required under CEQA Guidelines §15091, accompanied by a brief explanation of the rationale for each finding.
- ii. If the project being approved includes significant and unavoidable environmental impacts, adopt a Statement of Overriding Considerations that complies with CEQA Guidelines §15093. Such a statement must be included in the record of the project approval and mentioned in the notice of determination filed by the Commission.
- iii. Adopt a reporting or monitoring program for the changes to the project that the Commission has adopted or made a condition of its approval.

f. **File Notice of Determination** File a notice of determination stating that LAFCO issued its approval pursuant to the EIR or ND certified or adopted by the Lead Agency. The Notice of Determination need not state that the EIR or ND complies with CEQA.

g. **Grounds for Requiring Subsequent Environmental Documentation (CEQA Guidelines §15162).** The grounds for requiring a Subsequent

environmental review, in those instances where LAFCO has shifted, under §15052 of the CEQA Guidelines, in designation from a Responsible Agency to the Lead Agency, are any one of the following concerns listed in CEQA Guidelines §15162, on the basis of substantial evidence in the light of the whole record:

- i. Substantial changes are proposed in the project that will require major revisions of the original environmental document due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
- ii. Substantial changes occurred with respect to the circumstances under which the project is undertaken which will require major revisions of the original environmental documentation due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
- iii. New information of substantial importance, which was known and could not have been known with the exercise of reasonable diligence at the time the original environmental documentation was adopted, shows any of the following:
  - (1) The project will have one or more significant effects not discussed in a previous environmental document.
  - (2) Significant effects previously considered will be substantially more severe than shown in a previous environmental document.
  - (3) Mitigation measures or alternatives previously found infeasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative.
  - (4) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially lessen one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

An Initial Study should be used to determine whether subsequent environmental review is required. A subsequent EIR or subsequent ND shall be given the same notice and public review as required under CEQA Guidelines §15087 or §15072. A subsequent EIR or ND shall state where the previous document is available and can be reviewed.

- h. **Grounds for Requiring Supplemental Environmental Documentation (CEQA Guidelines §15163).** The Commission may undertake Supplemental rather than Subsequent environmental review if:
  - i. Any of the conditions described in CEQA Guidelines §15162 would require the preparation of subsequent environmental review, and
  - ii. Only minor additions or changes would be necessary to make the previous environmental document adequately apply to the project in the changed situation.

A supplement to an EIR shall be given the same kind of notice and public review as is given to a draft EIR under CEQA Guidelines §15087. A supplement to an EIR may be circulated by itself without recirculating the previous draft or final EIR. When the Commission decides whether to approve the project, it shall consider the previous EIR as revised by the supplemental EIR. A finding under CEQA Guidelines §15091 shall be made for each significant effect shown in the previous EIR as revised.

- i. **Grounds for Requiring Addendum to EIR or Negative Declaration (CEQA Guidelines §15164).** An addendum to a previously certified EIR shall only be prepared by the Commission if some changes or additions are necessary but none of the conditions described in CEQA Guidelines §15162 calling for preparation of a subsequent EIR have occurred.

An addendum to an adopted Negative Declaration (ND) may be prepared if only minor technical changes or additions are necessary or none of the conditions described in CEQA Guidelines §15162 calling for the preparation of a subsequent EIR or ND have occurred.

An addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted ND.

The Commission shall consider the addendum with the final EIR or adopted ND prior to making a decision on the project.

A brief explanation of the decision not to prepare a subsequent EIR pursuant to CEQA Guidelines §15162 should be included in an addendum to an EIR, the Commission's findings on the project, or elsewhere in the record. The explanation must be supported by substantial evidence.

### SECTION 2.3.3 CEQA PROCEDURES WHERE LAFCO IS THE LEAD AGENCY

#### 1. LAFCO's Role as a Lead Agency

- a. **General Policy.** The Lead Agency is the entity that has the principal responsibility for approving or carrying out a project (PRC §21067). In most cases, Santa Clara LAFCO expects that other agencies will carry out Lead Agency obligations, with LAFCO reviewing the environmental documents as a Responsible Agency.

When acting as Lead Agency, Santa Clara LAFCO will ensure that all required elements of the CEQA process are completed and conducted consistent with the requirements of CEQA.

- b. **LAFCO as Lead Agency.** Santa Clara LAFCO will function as the Lead Agency when:

- i. It is the first agency to act on an application
- ii. It initiates a proposal (e.g., Sphere of Influence Amendment or a Service Review)
- iii. It enters into an agreement, pursuant to CEQA Guidelines §15051(d), to act as the Lead Agency; or
- iv. The proposal involves any of the following:
  - (1) The incorporation of a new city
  - (2) The formation of a new special district
  - (3) The adoption of a new sphere of influence for an agency

- c. **Questions Concerning Lead Agency Status.** If there is a question regarding whether or not LAFCO will be Lead Agency or whether the proposal is statutorily or categorically exempt, an *Environmental Information Form* (available on the LAFCO website) will need to be completed and signed before meeting with LAFCO staff to determine lead agency status or whether a proposal is exempt.

2. **Application Submittal.** Where Santa Clara LAFCO is to act as the Lead Agency for CEQA processing, the applicant shall submit a completed application, including a fully completed *Environmental Information Form* (available on the LAFCO website). LAFCO shall determine whether the application is complete enough to prepare environmental documentation and may request additional information needed to complete an adequate environmental review under CEQA, as the need arises.

3. **Initial Review and Informal Consultation with Other Agencies** . Once the application is sufficiently complete to initiate environmental review, informally consult with other interested public agencies to obtain their views regarding the potential environmental impacts of the project. This consultation is in addition to a formal consultation required prior to the determination on the appropriate environmental documentation that LAFCO, as the Lead Agency, will prepare. See sections under *Preparation of an Initial Study*.
4. **Making Initial Determinations**. Determine whether the project qualifies for an exemption from preparation of additional environmental documents pursuant to CEQA Guidelines §15061 or whether an Initial Study is needed to determine if the project requires a ND, Mitigated ND, or EIR.
  - a. **Determining Whether the Project is Exempt from CEQA (CEQA Guidelines §15061)**. Prepare a staff report that includes a description of the project, identifies the applicable exemption in the law or CEQA Guidelines, presents reasons supporting the finding of exemption and a recommendation that the Commission approve the exemption for the project.
  - b. **Notice of Exemption (CEQA Guidelines §15062)**. If LAFCO determines that the project is exempt, prepare and file a Notice of Exemption (NOE) as described in CEQA Guidelines §15062. Such a NOE shall be filed with the County Clerk-Recorder and the State Clearinghouse. A copy of the NOE will be placed in the project file. The County Clerk-Recorder's Office shall post the NOE within 24 hours of receipt and for at least thirty (30) calendar days following receipt. If a NOE is filed, the statute of limitations is 35 days from the date of the Lead Agency's decision to approve the project, as opposed to 180 days if an NOE is not filed.
  - c. **Typical LAFCO Related Categorical and Statutory Exemption**. Please see *Exhibit 2.3-B* for a list of typical LAFCO related categorical and statutory exemptions to CEQA.
  - d. **Exceptions or Limitations on the Use of Exemptions**. Please see *Exhibit 2.3-B* for information about limitations on the use of exemptions.
5. **Preparation of an Initial Study**
  - a. **Conducting of the Initial Study (CEQA Guidelines §15063)**. If Santa Clara LAFCO determines that a project is not exempt, then prepare an Initial Study pursuant to CEQA Guidelines §15063, including completion of an Initial Study Checklist to determine whether the project will be processed

with a ND, Mitigated ND, or EIR. LAFCO may use information provided in the *Environmental Information Form* prepared by the applicant, and information from any other appropriate source.

- b. **Formal Consultations with Responsible and Trustee Agencies (PRC §21080.3).** Prior to determining whether a ND, Mitigated ND, or EIR is required for a project, consult with all responsible agencies, trustee agencies, and with any other public agency which has jurisdiction by law over natural resources affected by the project which are held in trust for the people of the State of California. Prior to that required consultation, LAFCO may informally contact any such agency.
- c. **AB 52 Tribal Consultation (PRC §21080.3.1).** Within 14 days of determining that an application for a project is complete or a decision by LAFCO to undertake a project, provide formal written notice to the designated contact of California Native American tribes that have requested notice of proposed projects. Such written notice shall include a brief description of the proposed project and its location, the LAFCO's contact information, and a notification that the California Native American tribe has 30 days to request consultation pursuant to this section.

Prior to the release of a ND, Mitigated ND, or EIR for a project, begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project if: (1) the California Native American tribe requested to Santa Clara LAFCO, in writing, to be informed by LAFCO through formal notification of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe, and (2) the California Native American tribe responds, in writing, within 30 days of receipt of the formal notification, and requests the consultation.
- d. **Environmental Determination (CEQA Guidelines §15064).** Based on the Initial Study and any consultations, determine whether to prepare a ND, Mitigated ND, or EIR for the project, and provide notice of that decision to the project applicant.

## 6. Negative Declaration / Mitigated Negative Declaration Process

- a. **Determining Whether to Prepare a Negative Declaration (ND) or Mitigated Negative Declaration (MND) (CEQA Guidelines §15070-§15075).** A ND or MND may be prepared when the Initial Study shows that:

- i. There is no substantial evidence that the project may have a significant effect;
- ii. The Initial Study identified potentially significant effects but changes in the project proposal were made which eliminated the effects;
- iii. Changes to the project have been proposed for adoption by LAFCO which eliminate adverse effects, or render them less than significant; or
- iv. There is no substantial evidence that the project as revised may have significant effects on the environment.

b. **Contents of the Negative Declaration (ND) or Mitigated Negative Declaration (MND) (CEQA Guidelines §15071).** The ND or Mitigated ND must consist of the following:

- i. A brief description of the project, including a commonly used name for the project,
- ii. The location of the project (preferably shown on a map) and the name of the project proponent,
- iii. Statement finding that the project will not have a significant effect on the environment,
- iv. Attached copy of the Initial Study documenting reasons to support the above finding, and
- v. Presentation of mitigation measures, if any, included in the project to avoid potentially significant effects.

c. **Notice of Intent to Adopt Negative Declaration and Public Review Period (CEQA Guidelines §15072).** A Notice of Intent to adopt or consider a ND or Mitigated ND must be provided to the public, responsible agencies, trustee agencies, and the county clerk of each county within which the proposed project is located, not less than twenty (20) days in advance of the hearing. When a proposed ND or Mitigated ND and Initial Study are submitted to the State Clearinghouse for review by state agencies, the public review period must not be less than 30 days, unless a shorter period is approved by the State Clearinghouse. The shortened review period must not be less than twenty (20) days. If a public agency comments upon the ND or Mitigated ND, that agency will be provided with notice of public hearings on the project. The notice must satisfy the requirements of PRC §21092.

The Notice of Intent must be provided pursuant to CEQA Guidelines §15072:

- i. By mail to all organizations and individuals who previously requested notice in writing. [CEQA Guidelines §15072(b)]
- ii. By publication at least one time in a newspaper of general circulation in the area affected by the project. [CEQA Guidelines §15072(b)(1)]
- iii. The notice must be posted in the County Clerk-Recorder's Office of each county within which the proposed project is located for a period of at least 20 days. [CEQA Guidelines §15072(d)]
- iv. In the case of a project of statewide, regional, or areawide significance, the lead agency shall also provide notice to:
  - (1) Transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project as specified in PRC §21092.4(a) and CEQA Guidelines §15072(e), and
  - (2) The State Clearinghouse as specified in CEQA Guidelines §15073(d). See *Exhibit 2.3-A* for additional guidance.
- v. If the United States Department of Defense or any branch of the United States Armed Forces has given Santa Clara LAFCO written notification of the specific boundaries of a low-level flight path, military impact zone, or special use airspace and provided LAFCO with written notification of the military contact office and address for the military service pursuant to subdivision (b) of §15190.5, then notice shall also be given to specified military contact office.

See CEQA Guidelines §15072(g) for information that is required to be included in a Notice of Intent.

**d. Determination of Adequacy of the ND or Mitigated ND By the Commission (CEQA Guidelines §15074)**

- i. Public hearings must be held on all Negative Declarations.
- ii. Prior to approval of the project, the Commission must consider the proposed ND or Mitigated ND together with any comments received during the public review process and must find that the ND or Mitigated ND is adequate and complete, that the project will not have a significant effect on the environment, and that the ND or Mitigated ND reflects the Commission's independent judgement and analysis. In

the case of Mitigated NDs or other projects that have been modified to reduce or eliminate one or more significant effects, assure that such modification is a part of the project record and is included as a condition or other requirement of approval.

- iii. When adopting a ND or Mitigated ND, the Commission shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.
- iv. When adopting a Mitigated ND, the Lead Agency shall adopt a program for reporting on and monitoring changes which it has either required in the project or made a condition of approval to mitigate or avoid significant environmental effects.
- v. If the Commission decides not to adopt mitigation measures or revisions that remediate potential adverse environmental impacts to a less than significant level, and desires to consider approving the project; an EIR must be prepared prior to the consideration of the project.
- vi. The Commission shall not adopt a ND or Mitigated ND for a project within the boundaries of a comprehensive airport land use plan or, if a comprehensive airport land use plan has not been adopted, for a project within two nautical miles of a public airport or public use airport, without first considering whether the project will result in a safety hazard or noise problem for persons using the airport or for persons residing or working in the project area.

e. **Mitigation Monitoring and Reporting Program (MMRP) (CEQA Guidelines §15097).** The MMRP shall include:

- i. A list of mitigation measures stated exactly as adopted by the Commission;
- ii. For each mitigation measure, actions that need to be taken by the project proponent, other public agencies and LAFCO will be listed;
- iii. For each mitigation measure, every action needed to complete the mitigation measure shall be clearly described and include an anticipated date or timetable for completion;
- iv. For each mitigation measure, a section where field notes, status information and problem resolution data can be entered;

- v. For each mitigation measure, required Santa Clara LAFCO verification action.
- f. **Filing of the Notice of Determination (CEQA Guidelines §15075).** If the Commission decides to carry out or approve the project, prepare a Notice of Determination (NOD) substantially in the form prescribed in CEQA Guidelines §15094(b). The filing of the NOD starts a 30-day statute of limitation on court challenges to the approval under CEQA. The NOD can be filed only with either an exemption from the Fish and Game fees, or a check for the current fee. An Environmental Declaration form indicating the fee status must be filed with all NODs that go to the County Clerk at the Recorder's Office. If it appears that the proposed project will not impact wildlife habitat, no fees are required. However, LAFCO is required to request and receive a California Department of Fish and Game "No Effect Determination." The NOD and the "No Effect Determination" must be:
  - i. Filed with the County Clerk-Recorder within 5 working days after the approval of the project. The County Clerk-Recorder will post the NOD within 24 hours of receipt and keep it posted for 30 days.
  - ii. Posted on the Santa Clara LAFCO website.
  - iii. Electronically filed with the State Clearinghouse within 5 working days after approval of the project.
- g. **Rejecting the Negative Declaration or Mitigated Negative Declaration (MND). [PRC §21157.5 and CEQA Guidelines §15073.5(d)]** If the Commission determines that an Environmental Impact Report (EIR) is needed for a project for which a ND or Mitigated ND has previously been prepared or filed, prepare a Draft EIR. The Commission will continue the hearing on the project to a future date whereupon the Draft EIR will be available.

#### **SECTION 2.3.4 ENVIRONMENTAL IMPACT REPORT PROCESS (CEQA GUIDELINES §15080-§15096)**

##### **1. Draft Environmental Impact Report (EIR) Process**

- a. **Submission of Additional Information.** If the Initial Study indicates the need for an EIR, ask the applicant to submit additional information needed to prepare the Draft EIR. Preparation of the Draft EIR will not commence until LAFCO has determined that all necessary information has been received.

- b. **Notice of Preparation (NOP) (PRC §21080.4 and CEQA Guidelines §15082).** After determining that an EIR is required, complete a NOP stating that an EIR will be prepared pursuant to CEQA Guidelines §15082. The NOP will be sent to each known Responsible Agency, Trustee Agency, the State Clearinghouse, every federal agency involved in approving or funding the project, and the military contact office (if applicable), and filed with the county clerk of each county in which the project will be located. The NOP will provide Responsible Agencies with sufficient information describing the project and environmental effects to enable them to provide meaningful responses. The NOP must include:
  - i. A description of the project.
  - ii. The location of the project indicated on an attached map.
  - iii. The probable environmental effects of the project.
  - iv. A copy of the Initial Study when appropriate.
- c. **EIR Scoping (PRC §21080.4).** In addition to any formal or informal consultations, consult with affected agencies, technical experts, or interested persons and groups in order to maximize the quality of, and disclosures contained in, the environmental document. When requested by a Responsible Agency, Trustee Agency or project applicant, convene a meeting to discuss the scope and content of the proposed EIR as soon as possible, but not later than thirty (30) days after the meeting is requested. Meetings may also be held with interested individuals, technical experts, CEQA professionals or others who can contribute to completion of an adequate CEQA document.
- d. **Preparation of the Draft EIR.** The Draft EIR must contain all the information required by Article 9 of the CEQA Guidelines (§15120-§15132).
- e. **Notice of Completion.** As soon as the Draft EIR is completed, file a Notice of Completion with the State Clearinghouse as provided in CEQA Guidelines §15085.
- f. **Public Notice of Availability of Draft EIR (CEQA Guidelines §15087 and §15105).** A public notice of the availability of the Draft EIR must be provided at the same time as a Notice of Completion is sent to the State Clearinghouse. The public review period for the Draft EIR must be not less than (30) days nor should it be longer than (60) days in advance of the hearing.

When a proposed Draft EIR is submitted to the State Clearinghouse for review by state agencies, the public review period must not be less than 45 days unless a shorter period is approved by the State Clearinghouse. The shortened review period must not be less than thirty (30) days. If a public agency comments upon the Draft EIR, that agency will be provided with notice of public hearings on the project. The notice must satisfy the requirements of PRC §21092. The Notice of Availability of Draft EIR must be provided:

- i. By mail to all organizations and individuals who previously requested notice in writing,
- ii. By publication in a newspaper of general circulation in the area affected by the project,
- iii. Posted in the County Clerk-Recorder's offices for a period of at least 30 days, and
- iv. Electronically filed with the State Clearinghouse. See *Exhibit 2.3-A* for additional guidance.

g. **Seeking Comments on Draft EIR (CEQA Guidelines §15086).** Santa Clara LAFCO shall consult with and request comments on the Draft EIR from:

- i. Responsible Agencies,
- ii. Trustee Agencies with resources affected by the project,
- iii. Any other State, Federal, and local agencies which have jurisdiction by law with respect to the project or agencies with resources affected by the project, including water agencies,
- iv. Any city or county which borders on a city or county within which the project is located,
- v. For a project of statewide, regional, or areawide significance, the transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project and public transit agencies with facilities within one-half mile of the proposed project
- vi. For a subdivision project located within one mile of a facility of the State Water Resources Development System, the California Department of Water Resources.

- h. **Written Comments on the Draft EIR (CEQA Guidelines §15088).** During the Public Review Period any interested person may submit written comments on the draft EIR to the Commission.
    - i. **Response to Written Comments on Draft EIR (CEQA Guidelines §15088).** Evaluate comments on environmental issues received from persons who reviewed the draft EIR and prepare a written response by revising the Draft EIR or by including a separate section with responses in the Final EIR. The proposed response must be provided to the commentor 10 days prior to the Commission's certification of the EIR. The responses shall comply with the requirements set forth in CEQA Guidelines §15088(c).
2. **EIR / Final EIR Contents (CEQA Guidelines §15132).** The EIR must contain the following:

  - a. The Draft or revised Draft EIR,
  - b. Comments and recommendations received on the Draft EIR either verbatim or in summary,
  - c. A list of persons, agencies and organizations commenting on the Draft EIR,
  - d. Responses to significant environmental points raised during the review and consultation processes, and
  - e. Any information added, or corrections made, by the Lead Agency
3. **EIR Distribution.** Distribute the Final EIR to those agencies and persons who submitted comments on the Draft EIR.
4. **EIR Public Hearing.** At the public hearing, the Commission shall consider the contents of the EIR; consider written comments and the responses provided, and any oral testimony. If no substantive questions are raised regarding the content or adequacy of the EIR, certify the EIR as a Final EIR. If the EIR is substantially questioned as to content or if testimony received requires responses, continue the hearing and prepare responses that will be incorporated into a Final EIR (CEQA Guidelines §15088).
5. **Final Environmental Impact Report (FEIR) Process**

  - a. **Submission of Additional Information.** As a result of questions raised during the Draft EIR process, the project applicant may be required to submit additional information necessary for preparation of the Final EIR.
  - b. **Final EIR Public Hearing.** At the public hearing, the Commission shall consider the Final EIR; hear any testimony relative to the Final EIR from those in attendance at the hearing; certify that the Final EIR has been

completed in compliance with CEQA and State Guidelines, and that the Commission has reviewed and considered the information contained in the Final EIR; and adopt any findings as required by this section (CEQA Guidelines §15091). The Final EIR must be certified prior to action upon the project.

- c. **Additional Information.** If the Commission intends to approve a project for which the Final EIR identifies one or more significant effects, it may require the proponent of the project to provide and submit evidence into the record to substantiate the need to approve the project notwithstanding the identification of the significant environmental effects of the project as proposed.
- d. **FEIR Certification (CEQA Guidelines §15090).** Prior to approving a project the Commission shall certify that:
  - i. The Final EIR has been completed in compliance with CEQA and CEQA Guidelines; and
  - ii. The document reflects the independent judgment and analysis of LAFCO; and
  - iii. LAFCO has reviewed and considered the information contained in the FEIR prior to approving the project.

## 6. Significant Effects-Finding Required

- a. **Findings (CEQA Guidelines §15091).** The Commission must not approve a project for which a Final EIR has been certified and which identifies one or more significant environmental effects of the project unless it makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding (CEQA Guidelines §15091). Oral findings may be made and approved by the Commission as part of the hearing process, provided the findings are transcribed and placed in the project file.

Each finding must be supported by substantial evidence in the record. No action on a project will be considered final until findings are adopted. Possible findings are:

- i. Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant environmental effects thereof as identified in the Final EIR [GC §15091(a)(1)];

- ii. Such changes or alterations are within the responsibility and jurisdiction of another public agency and have been adopted by such other agency, or can and should be adopted by such other agency [GC §15091(a)(2)]; and
- iii. Specific overriding public health and safety, economic, legal, social, economic, technological or other benefits of the project outweigh the significant effects on the environment and identified considerations render proposed mitigation measures or project alternatives identified in the Final EIR infeasible. Each finding must include a description of the specific reasons for rejecting identified mitigation measures and project alternatives. [GC §15091(a)(3)]

b. **Mitigation Monitoring and Reporting Program (MMRP).** If mitigation measures are adopted by the Commission for the purpose of reducing the environmental impacts of a project, a mitigation monitoring and reporting program must be prepared and adopted by the Commission prior to the approval of a proposed project and pursuant to PRC §21081.6.

The MMRP must include:

- i. A list of mitigation measures stated exactly as adopted by the Commission.
- ii. For each mitigation measure, actions that need to be taken by the project proponent, other public agencies and Santa Clara LAFCO will be listed.
- iii. For each mitigation measure, every action needed to complete the mitigation measure must be clearly described and include an anticipated date or timetable for completion.
- iv. For each mitigation measure, a section where field notes, status information and problem resolution data can be entered.
- v. For each mitigation measure, required LAFCO verification action.

c. **Statement of Overriding Considerations (CEQA Guidelines §15093).** When the Commission approves a project which will result in the occurrence of significant effects which are identified in the Final EIR but are not avoided or substantially lessened, the Commission shall state in writing the specific reasons to support its action based on the Final EIR and/or other information in the record. Such statement is referred to as the Statement of Overriding Considerations. The Statement of Overriding

Considerations should explain how specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects. The Statement of Overriding Considerations shall be supported by substantial evidence in the record. The Statement of Overriding Considerations should be included in the record of the project approval and should be mentioned in the notice of determination.

- d. **Filing of the Notice of Determination (CEQA Guidelines §15094).** If the Commission decides to carry out or approve the project, prepare a Notice of Determination (NOD) substantially in the form prescribed in CEQA Guidelines §15094(b). The filing of the NOD starts a 30-day statute of limitation on court challenges to the approval under CEQA. The NOD must be:
  - i. Filed with the County Clerk-Recorder within 5 working days after the approval of the project. The County Clerk-Recorder shall post the NOD within 24 hours of receipt and keep it posted for 30 days. The County Clerk-Recorder will return the notice to Santa Clara LAFCO with a notation of the period during which it was posted. Santa Clara LAFCO will retain the notice for not less than twelve (12) months.
  - ii. Electronically filed with the State Clearinghouse within 5 working days.

**EXHIBIT 2.3-A: REVIEW BY STATE AGENCIES**

1. **State Clearinghouse Review.** EIRs and NDs to be reviewed by State agencies must be submitted to the State Clearinghouse as prescribed in CEQA Guidelines §15205 and §15206.
  - a. **State Agency Review of Projects of Statewide, Regional or Areawide Significance.** State review will proceed according to the following provisions:
    - i. EIRs and Negative Declarations must be submitted to the State Clearinghouse, as prescribed in CEQA Guidelines §15206, whenever it is determined that a project may be of statewide, regional or areawide significance.
    - ii. Request that the State Clearinghouse transmit a copy of each project's State Clearinghouse distribution list to Santa Clara LAFCO.
  - b. **State Fish and Game Department Environmental Review Fees.** If the State Clearinghouse distribution list indicates that a project has been reviewed by the State Department of Fish and Wildlife, the project will be determined to have an effect on fish and wildlife. LAFCO may also determine that a project will have an effect on fish and wildlife, and may submit a project to the State Department of Fish and Wildlife specifically for environmental review purposes, independent of action by the State Clearinghouse. In either case, the project will be subject to State Fish and Game fees pursuant to PRC §21089 and §711.4 of the State Fish and Game Code regulations. LAFCO shall notify the project proponent of the need to pay State Fish and Game fees.

LAFCO shall not approve a project for which an EIR or Negative Declaration has been prepared and which will have an effect on fish and wildlife until State Fish and Game Department fees have been paid. Pursuant to State law, a project found to have an effect on fish and wildlife cannot be vested or approved until Fish and Game fees have been paid. LAFCO may continue any hearing so that the applicant can remit required fees as permitted by the CKH Act. Unless otherwise ordered by the Commission, any public hearing continued solely for the purpose of collecting fees shall be deemed closed and additional evidence and testimony shall not be taken. The Commission may place a condition of approval on the project requiring payment prior to finalizing the proposal.

If a project is found to have an effect on fish and wildlife, and fees have been paid, Santa Clara LAFCO must note in the public record that Fish and Game fees have been paid pursuant to PRC §21089. LAFCO shall maintain proof of fee payment in the project history file. LAFCO will also include the final approving body's findings and record of fee payment on the Notice of Determination for a project. Fees will be deposited with the County Clerk-Recorder.

**EXHIBIT 2.3-B: CATEGORICAL AND STATUTORY EXEMPTIONS**

**1. Typical LAFCO Related Categorical Exemptions**

There are currently thirty-three Categorical Exemptions that have been created by the State of California pursuant to PRC §21084 and CEQA Guidelines §15300.4. The following is a list of typical LAFCO related categorical exemptions:

- a. Class 1 - Existing Facilities (CEQA Guidelines § I 5301).
- b. Class 2 - Replacement or Reconstruction (CEQA Guidelines §15302).
- c. Class 3 - New Construction or Conversion of Small Structures (CEQA Guidelines §15303).
- d. Class 4 - Minor Alterations to Land (CEQA Guidelines §15304).
- e. Class 6 - Information Collection (CEQA Guidelines §15306).
- f. Class 7 - Actions by Regulatory Agencies for Protection of Natural Resources (CEQA Guidelines §15307).
- g. Class 8 - Actions by Regulatory Agencies for Protection of the Environment (CEQA Guidelines §15308).
- h. Class 19 - Annexations of Existing Facilities and Lots for Exempt Facilities (CEQA Guidelines §15319). Class 19 applies to two types of annexations:
  - i. Annexations to a city or special district of areas containing existing public or private structures developed to the density allowed by the current zoning or pre-zoning of either the gaining or losing governmental agency whichever is more restrictive, provided however that the extension of utility services to the existing facilities would have the capacity to serve only the existing facilities.
  - ii. Annexations of individual small parcels of the minimum size for facilities exempted by CEQA Guidelines §15303, New Construction or Conversion of Small Structures.
- i. Class 20 - Changes in Organization of Local Agencies (CEQA Guidelines §15320). Class 20 consists of changes in the organization or reorganization of local agencies that do not change the geographical area in which previous existing powers are exercised. Examples include but are not limited to:
  - i. Establishment of subsidiary district;
  - ii. Consolidation of two or more districts having identical powers; and

- iii. Merger with a city of a district lying entirely within the boundaries of the city.

## 2. **Statutory Exemptions**

There are several types of projects, such as emergency repairs, fee adoption, ministerial projects, and feasibility or planning studies, which are statutorily declared exempt from the requirements of CEQA. All statutory exemptions are listed in CEQA Guidelines §15260-15285.

## 3. **Exceptions or Limitations on the Use of Exemption (CEQA Guidelines §15300.2)**

The following are limitations on the use of exemptions:

- a. Class 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located - a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, EXCEPT where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state or local agencies [§15300.2(a)].
- b. All exemptions are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant[§15300.2(b)].
- c. A categorical exemption cannot be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances [§15300.2(c)].
- d. A categorical exemption cannot be used for a project that may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements that are required as mitigation by an adopted negative declaration or certified EIR. [§15300.2(d)]
- e. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to GC §65962.5. [§15300.2(e)].
- f. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource. [§15300.2(f)].

**EXHIBIT 2.3-C: TYPICAL CEQA TIME LIMITS**

LAFCO must follow the time limits set forth in CEQA Guidelines, Article 8, §15100-15112, in processing environmental documents. CEQA Guidelines §15111 provides that where the principal act governing a public agency's consideration provides for time limits for processing an application that are shorter than those authorized under CEQA, then the application must not be deemed accepted under the principal act until CEQA compliance has occurred. Santa Clara LAFCO is governed by the CKH Act. GC §56658(h) of the CKH Act sets a mandatory ninety (90) calendar-day time period from acceptance of an application to time of hearing before the Commission. Since this is inadequate time to complete certain environmental review processes, applications for the purposes of compliance with CKH Act must not be deemed complete until the CEQA process has reached a point where it can be completed within the ninety (90) calendar-day time limits of CKH Act. See table below for typical CEQA timelines.

TRIGGER EVENT	ACTION REQUIRED	TIME PERIOD	CODE SECTION
<b>As soon as the application is deemed complete for CEQA review purposes.</b>	Lead Agency is encouraged to consult with responsible agencies before and during preparation of an EIR so that the document will meet the needs of all agencies which will use it.	Before and during the preparation of an EIR	§15060.5 CEQA Guidelines
<b>As soon as Lead Agency has determined that an initial study will be required for the project.</b>	Lead Agency shall consult informally with all responsible agencies and all trustee agencies responsible for resources affected by the project to obtain the recommendations of those agencies as to whether an EIR or a negative declaration should be prepared.		§15063(g) CEQA Guidelines

TRIGGER EVENT	ACTION REQUIRED	TIME PERIOD	CODE SECTION
<b>After receiving a consultation or scoping request from a Lead Agency.</b>	Responsible Agency provides contact name, consults with Lead Agency, explains reasons for supporting or opposing an environmental determination, identifies issues, may attend meetings.	30 days	§15096 (b)(1) and (c) CEQA Guidelines
<b>After LAFCO / other agency / applicant requests a scoping meeting.</b>	Convene a meeting/consultation.	30 days	§15104 CEQA Guidelines
<b>After receiving a Notice of Preparation from a Lead Agency.</b>	Responsible Agency comments on the scope and content of the review of issues pertinent to its authorities.	As soon as possible but within 30 days	§15096 (b)(2) CEQA Guidelines
<b>Conducting an Initial Study.</b>	Make environmental determination (ND or EIR).	30 days (with 15 day extension option)	§15102 CEQA Guidelines
<b>After application is deemed complete.</b>	Prepare and adopt a Negative Declaration.	180 days	§15107 CEQA Guidelines
	Prepare and certify an EIR.	1 year with a 90 day extension (private initiated projects)	§15108 CEQA Guidelines

TRIGGER EVENT	ACTION REQUIRED	TIME PERIOD	CODE SECTION
<b>Hiring a consultant after environmental determination.</b>	Hire the consultant.	45 days (applicant can consent extension)	PRC §21151.5(b)
<b>After completing a ND or MND.</b>	Begin public review period.	20 days	§15105(b) CEQA Guidelines
		30 days if sent to Clearinghouse	
<b>After completing a Draft EIR.</b>	File a Notice of Completion.	As soon as the Draft EIR is issued	§15085(a) CEQA Guidelines
<b>After completing a Draft EIR.</b>	Begin public review period.	30 days minimum and no longer than 60 days except in unusual circumstances	§15105(a) CEQA Guidelines
		Not less than 45 days, unless a shorter period (not less than 30 days) is approved by the State Clearinghouse	
<b>Provide public notice of public review period.</b>	Post, publish, and/or mail notice of public review period.	At least the number of days required for public review	§15072(a) and §15087(a) CEQA Guidelines

TRIGGER EVENT	ACTION REQUIRED	TIME PERIOD	CODE SECTION
<b>Provide public notices.</b>	Post notice in County Recorder's Office.	Within 24 hours of receipt, 20 days (ND), 30 days (EIR)	PRC §21092.3
<b>Receive comments from a public agency.</b>	Respond to Comments on a Draft EIR in writing.	Provide responses to public agency 10 days before Final EIR certified	PRC §21092.5(a) and (b)
	Notify public agency of hearing on ND for which responses were received.	Is satisfied if public hearing notice provided to agency	
<b>After project approval.</b>	File / Post Notice of Determination with County Recorder.	Within 5 working days of approval, post within 24 hours	§15094(a) and (e) CEQA Guidelines
<b>After project approval.</b>	File / Post Notice of Exemption with County Recorder to change legal challenge period from 180 to 35 days.	After approval	§15062(d) CEQA Guidelines
<b>Notice of Determination filed/posted.</b>	File legal challenges.	35 calendar days from filing date	§15094 CEQA Guidelines

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# PART 3. POLICIES FOR EVALUATING PROPOSALS



## CHAPTER 3.1

# COUNTYWIDE URBAN DEVELOPMENT POLICIES

Adopted: 12/01/1971

Reaffirmed: 04/06/2022

### SECTION 3.1.1 INTRODUCTION

In the early 1970s, LAFCO, the County, and the 15 cities adopted<sup>1</sup> a set of fundamental growth management policies known as the Countywide Urban Development Policies (CUDPs). This pioneering and cooperative effort to guide future growth and development in Santa Clara County established jurisdictional roles, responsibilities, and regulatory systems for the timing and location of urban development. Its most central policy required urban growth and development to be located within cities and for unincorporated lands outside cities to remain rural.

Today, the CUDPs remain the foundation of all LAFCO policies, and of the cities' and County general plans. Furthermore, they serve as a living example of how collaboration between LAFCO, the County, and the cities, built on sound planning and growth management principles, help to discourage urban sprawl, preserve agricultural and open space lands, and promote efficient urban services delivery.

In the years immediately following their adoption, the CUDPs were documented in various adopted plans. These included the County's 1973 Urban Development / Open Space Plan, a countywide element of its general plan, and various general plans of the cities. The CUDPs formed the fundamental basis for the County's first consolidated 1980 County General Plan, and today, these policies are carried forward in the current Santa Clara County General Plan, the Envision San Jose 2040 General Plan, and are reflected in portions of most other cities' general plans.

These fundamental policies were incorporated and interwoven into various LAFCO policies over the years, forming an inseparable part of LAFCO law and policy for Santa Clara County. Given their long-term significance and ongoing applicability to planning and decision making in the future, this chapter provides an authoritative definition of

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<sup>1</sup> LAFCO adopted the CUDPs on December 1, 1971; the County Board of Supervisors adopted them on January 12, 1972; and the cities adopted them between December 1971 and April 1972.

the oft-referenced CUDPs, and comprehensively documents their history and their ongoing beneficial impacts.

### **SECTION 3.1.2 HISTORY**

When LAFCO was created in 1963, Santa Clara County was experiencing dramatic growth in population and economic development; however, it lacked a system to plan for the needs of the rapidly growing population and to manage the unbridled competition between the cities and County for territory and tax base. Annexation wars raged as cities competed with each other for land to meet growth needs exclusively by means of expansion, while the County, which still had a major percentage of the territorial jurisdiction of the North Valley, also allowed subdivisions and commercial development wherever possible. Cities leapfrogged over undeveloped lands and annexed long, narrow strips of land along public roads in order to annex farmlands whose owners were seeking to develop.

This period of the county's history caused significant jurisdictional fragmentation and transformed the natural landscape. Some cities pursued defensive annexations in order to block other cities from annexing lands in their vicinity. Seeking to avoid annexation by nearby cities, many landowners and residents incorporated as new cities. In the decade leading up to 1963, seven new cities were formed, and by 1963 there were 63 special districts in existence (not including school districts). The proliferation of special districts provided specialized municipal services (e.g., sewer / sanitation, water, fire protection) to new urban development, with resultant fragmentation and duplication of utilities and urban services.

This disorderly, unmanaged growth also resulted in rapid conversion of productive farmland to urban and suburban land uses, and by the early 1960s much of the farmland in the northern part of the county was urbanized. The county once known as the “Valley of Heart’s Delight,” with fruit orchards and farms spanning the valley floor, could best be described as a sprawling patchwork of development, with fragmented services and illogical jurisdictional boundaries that were difficult and costly to serve.

As the economic and environmental costs of sprawl began to be better understood, a cooperative, solution-oriented approach was sought. LAFCO took the lead, and in 1967 adopted “boundary agreement lines” that served as a “cease fire” solution to the annexation wars. These boundary agreement lines, (originally called Spheres of Influence) as agreed to by the cities, divided the entire county into 15 separate areas and defined which lands could potentially be annexed into each of the cities. These agreements, now superseded by the function of Urban Service Areas (USA) and Spheres of Influence, provided a stable foundation for LAFCO, the 15 cities and the County to then discuss how to manage urban development in the county for the long term. Those

discussions soon led to the development of a countywide policy framework through an unprecedented system of intergovernmental planning and cooperation, when LAFCO, the County and the 15 cities jointly adopted the Countywide Urban Development Policies.

### **SECTION 3.1.3 COUNTYWIDE URBAN DEVELOPMENT POLICIES**

The intent of adopting the CUDPs was for LAFCO, the County, and cities to establish a mutually agreed upon and long-term system to sustainably manage growth on a countywide basis. The CUDPs identify the distinct roles and expectations regarding the service responsibilities of the cities versus the county. They allow for urbanization in a manner that will accommodate the development goals of individual communities while conserving the natural resources of the county as a whole. They promote efficient and effective delivery of community services for existing and future residents / taxpayers, and they provide a stable and predictable foundation that allows for cooperative intergovernmental relations.

In brief, the fundamental CUDPs are stated as follows:

1. Urban development should occur, and urban services should be provided only on lands annexed to cities – and not within unincorporated areas, urban or rural.
2. Urban expansion should occur in an orderly, and planned manner – with cities responsible for planning and providing services to urban development within explicitly adopted Urban Service Areas (USA) whose location and expansion is subject to LAFCO approval authority.
3. Urban unincorporated islands within USAs should eventually be annexed into their surrounding cities, so that cities have the responsibility for urban services and land use authority over all lands within their USA boundaries.

### **SECTION 3.1.4 IMPLEMENTATION OF THE COUNTYWIDE URBAN DEVELOPMENT POLICIES**

The CUDPs established important mutual commitments between the County and the 15 cities regarding timing and location of urban development. Implementation of these policies occurred by means of an evolving collaborative partnership between cities, the County, and LAFCO.

The **County** agreed to no longer compete with the cities for new urban development and undertook a series of actions to fulfill its commitment to the CUDPs. For lands outside city USAs, the County adopted its 1980 General Plan with land use plan designations and zoning districts that significantly limited allowable uses and densities of development, typically with minimum lot sizes of 20 acres per parcel up to 160 acres per parcel.

For lands within USAs, as early as in 1975, the County approved ordinances and adopted referral procedures that provided the opportunity for a city to annex lands within unincorporated islands as a pre-requisite to proposed new urban development. The County also amended its development ordinances and policies to require that discretionary land use approvals such as subdivisions, zone changes, and use permits within city USAs conform to the general plans of the cities.

The **cities** assumed full responsibility to plan for and accommodate needed urban growth and prepared USA maps identifying lands they intended to annex in order to develop and provide urban services within 5 years. The cities submitted their proposed USA boundaries to LAFCO for approval and committed to annex lands within the USA, including unincorporated islands, which were generally the result of past annexation practices and the annexation wars.

LAFCO conducted hearings and adopted the USA boundaries for each of the 15 cities on the following dates.

Campbell	November 1, 1972
Cupertino	March 4, 1973
Gilroy	December 6, 1972
Los Altos	June 6, 1973
Los Altos Hills	January 3, 1973
Los Gatos	April 4, 1973
Milpitas	December 6, 1972
Monte Sereno	December 6, 1972
Morgan Hill	October 4, 1972
Mountain View	February 7, 1973
Palo Alto	April 4, 1973
San Jose	October 4, 1972
Santa Clara	November 1, 1972
Saratoga	March 4, 1973
Sunnyvale	December 6, 1972

**LAFCO** then became responsible for decision-making regarding future modifications to the cities' USA boundaries, in order to achieve the mutual goals that these policies established, such as agricultural land preservation, hillside preservation, and orderly, efficient and sustainable growth patterns. LAFCO's role in this regard is unique to Santa Clara County and is codified in state law.

From their inception to today, the CUDPs are essential and integral to all other LAFCO goals and policies. Therefore, LAFCO formally recognizes and affirms the CUDPs as the foundation of land use planning in Santa Clara County and all related policy and decision-making.

#### **SECTION 3.1.5 LASTING BENEFITS OF THE COUNTYWIDE URBAN DEVELOPMENT POLICIES**

Collaborative implementation of and steadfast commitment to these policies have made Santa Clara County a much more livable, sustainable place than it would otherwise have become. The CUDPs and their systematic approach to managing urban growth have benefited the county as a whole and all its residents in multiple and mutually-reinforcing ways to promote:

- **Sustainable Growth:** ensuring sustainability and livability of communities by ensuring quality of life is not sacrificed to disorderly growth;
- **Fiscal Responsibility and Resiliency:** minimizing costs to taxpayers for public infrastructure and services through compact growth;
- **Environmental Stewardship:** safeguarding air and water quality, wildlife habitat, and water supply reservoir watersheds, and preventing loss of public open space assets critical to ecological balance;
- **Affordable and Responsibly-Located Housing:** promoting complete and efficient use of existing urbanized lands within cities, building within rather than outward, resulting in more cost efficient housing opportunities close to transit and services;
- **Transportation Options:** reducing sprawl and promoting compact development to reduce traffic demand generated by outward growth, emissions and pollution from vehicles, reduce longer commute distances, and encouraging urban densities supportive of transit solutions;
- **Open Space and Farmland Preservation:** protecting open space, parklands, hillsides and farmlands from premature and/or unwarranted development.

Taken together, all of these beneficial outcomes are part of the future-oriented approach recognized as being necessary to address the potentially disastrous effects of increasing greenhouse gas emissions and climate change.

For example, the CUDP's framework focuses urban development within cities, while preserving non-urban, open space areas such as the mountains that ring the north and south valley, as well as the remaining agricultural lands outside cities. In the last few decades, many cities' policies have evolved to accommodate tens of thousands in population growth within their existing boundaries rather than covering vast areas of land with low density sprawl. As a result, even with substantial growth in the county's population and economy since the CUDPs were adopted, the county's urban footprint has remained largely unchanged.

The CUDPs have been critical to the county's ability to protect and preserve open space. Only 23% of the county's total land area is within cities' USAs, while accounting for an overwhelming majority (95%) of the county's 2 million residents. This growth pattern has allowed open space districts and conservation agencies to better protect open space lands outside the urbanized areas. Nearly 30% of the county's land area is now comprised of protected open space lands or land that is under conservation easements.

Implementing the CUDPs has significantly contributed to fiscal efficiency and cost savings to taxpayers. Over the years, LAFCO, the cities, and the County have facilitated the annexation of hundreds of unincorporated islands to their surrounding cities. Today there are far fewer islands and far fewer special districts providing services, reducing the inefficiencies of fragmented service and land use responsibilities, and resulting in more efficient delivery of public services at lower costs to taxpayers.

Furthermore, the CUDPs form the foundation of the plans and functions of many local and regional agencies working to create sustainable communities and landscapes. For example, the CUDP concepts continue to inform countywide climate resiliency and sustainability planning, as well as the work of the following:

- the land acquisition and preservation strategies of many agencies involved in open space and farmland preservation, such as the Santa Clara Valley Open Space Authority, Midpeninsula Regional Open Space District, Peninsula Open Space Trust, and others;
- the transportation planning and investment strategies of the Metropolitan Transportation Commission and the County's Valley Transportation Authority;
- the regional housing needs allocations made by the Association of Bay Area Governments;
- the Santa Clara Valley Water District's water supply planning; and

- the work of many non-profit organizations to promote social equity, affordable housing, and environmental justice.

When created nearly five decades ago, Santa Clara County's growth management system was recognized widely as a national pioneer and paradigm of cooperative regional planning for growth management, and its policies and successes have been adopted elsewhere with local variations. Today, the CUDP's systematic planning principles are crucial to and consistent with climate-smart growth policy and climate resiliency concepts that have taken shape in the last 20 to 30 years. They form the critical foundation of most regional planning and decision-making in Santa Clara County, not just for today but into the foreseeable future, as originally intended.

## CHAPTER 3.2 SPHERE OF INFLUENCE POLICIES

Adopted: 12/07/1977

Amended: 12/11/2002, 12/04/2024

### SECTION 3.2.1 SPHERE OF INFLUENCE (SOI) DEFINED

State law (GC §56076) defines a Sphere of Influence as “a plan for the probable physical boundaries and service area of a local agency, as determined by the Commission.” Local agency includes special districts and cities. In other words, a SOI boundary under State law represents the outermost possible extent of a local agency’s territorial jurisdiction and service area.

Consistent with State law, a SOI should be based on a number of factors, including sound planning principles related to a local agency’s physical geography, its anticipated and desired growth, its ability to accommodate land uses and development in a safe and appropriate manner consistent with state goals and policies, and its ability to plan for and provide services in a cost effective and efficient manner.

In Santa Clara County, the SOI is of critical importance to special districts as it delineates their potential physical boundaries and service area. However, the inclusion of an area within a city’s SOI boundary is not an indication that the city will either ultimately annex or provide services in the area. The critical boundary for cities is the Urban Service Area (USA), which is the definitive, Santa Clara LAFCO-adopted planning boundary indicating whether an area will be potentially annexed and provided with urban services. Santa Clara LAFCO-approved USAs serve the objectives of the Cortese-Knox-Hertzberg Act, such as directing the location of urban development to prevent urban sprawl, ensuring an agency’s ability to provide efficient services, and preserving agricultural and open space lands. Therefore, for cities in Santa Clara County, USAs serve the objectives of SOIs as defined in state law.

To summarize, in Santa Clara County, the following definitions are maintained:

**Special Districts SOI:** SOI for a special district, means a plan for the probable physical boundaries and service area of the district, as determined by Santa Clara LAFCO.

**Cities SOI:** For cities in Santa Clara County, a SOI generally delineates areas where the city and County have shared interests in preserving non-urban levels of land use and does not necessarily indicate areas that a city will annex or provide with urban services.

The role of USAs and the Countywide Urban Development Policies (CUDPs), both unique to Santa Clara County, are further defined and articulated in two separate chapters of the Santa Clara LAFCO policies. To fully understand how the use and application of SOI

boundaries currently function in Santa Clara County, it is important to understand both the legislative history and local evolution of SOIs as a planning concept.

### **SECTION 3.2.2 LEGISLATIVE HISTORY**

Since 1963, State legislation has provided LAFCOs with authority to initiate and conduct studies on the structure of local government and the provision of services within the county. The intent of this permissive authority was to encourage LAFCOs to establish long range, comprehensive goals and plans for implementing their mandated purpose of "discouraging urban sprawl and encouraging the orderly formation and development of local agencies."

The State Legislature declared in 1972 that LAFCOs must perform studies if they are to meaningfully carry out their "purposes and responsibilities for planning and shaping the logical and orderly development and coordination of local governmental agencies so as to advantageously provide for the present and future needs of the county and its communities." With this declaration, the Legislature amended the Knox-Nisbet Act to mandate LAFCOs to develop and determine the "sphere of influence" of each local agency within the county.

In 1983, the Cortese-Knox Act was amended to require LAFCOs to determine the SOI of each local agency by January 1, 1985, and to mandate that all changes of organization must be consistent with adopted SOIs.

The laws were further amended with the Cortese-Knox-Hertzberg Local Government Reorganization Act (CKH Act) of 2000, which requires LAFCOs to conduct a service review prior to or in conjunction with the establishment or amendment of a local agency's SOI. Furthermore, the CKH Act requires LAFCOs to review and update, as necessary, each local agency's SOI before January 1, 2008, and every five years thereafter, as needed.

These successive changes to State law reflect the evolution of state policy for SOIs to secure the purposes of state LAFCO laws and ensure proper functioning of local agencies in the delivery of services. The evolution of SOI boundaries and policies in Santa Clara County follows the evolution of SOIs in state law, as well as reflecting the unique circumstances of Santa Clara County as it responded to the challenges of rapid, unplanned, uncontrolled sprawl in the decades immediately following World War II.

### **SECTION 3.2.3 DEVELOPMENT OF CITY AND SPECIAL DISTRICTS SPHERES OF INFLUENCE IN SANTA CLARA COUNTY**

One of the first matters that the Santa Clara LAFCO addressed upon its creation in 1963 was to establish "sphere of influence" boundaries to prevent further annexation wars. These original SOIs (later to be known as boundary agreement lines) divided the county into 15 parts and were nothing more than boundaries between each of the fifteen cities to prevent a city from annexing territory in the area of interest of another. This process of establishing SOIs (or boundary agreement lines) was essentially completed in 1967.

These boundaries put a temporary halt to the annexation wars, and their adoption set the stage for the collaborative development and adoption of the CUDPs by Santa Clara LAFCO, the County and the 15 cities, including the establishment of USA boundaries for each of the 15 cities.

These original SOI boundaries in many cases extended from city limits outward to the county boundary, well beyond any interest of the cities regarding annexation, much less a city's ability to serve such an expansive area. In this regard, they furthermore did not meet the intent of the subsequent 1972 SOI mandates as prescribed in the Knox Nisbet Act.

Consequently, in June 1976, Santa Clara LAFCO renamed the SOI boundaries as the 'boundary agreement lines' and established new SOI boundaries for cities in a manner more closely related to the state requirements. These new SOI boundaries for cities generally corresponded to the outer limits of a city's planning interest, as shown on the land use diagrams of a city general plan, and inherently included areas where both the County and the city had shared interests. It is important to note that by 1973, the County and cities had mutually agreed to the CUDPs whereby urban development would henceforth be confined to lands in city jurisdiction, and lands outside city USAs would be primarily conserved for agriculture, open space, natural resource protection, and related goals of environmental stewardship.

In 1985, Santa Clara LAFCO completed its efforts in fulfilment of state laws and formally adopted SOI boundaries for all special districts, after completing a comprehensive review and analysis necessary to make the determinations required in state law.

Between 2005 and 2010, Santa Clara LAFCO conducted its first round of service reviews and comprehensively reviewed and updated the spheres of influence of the 15 cities and 28 special districts in the county. Since that time, Santa Clara LAFCO has continued to conduct service reviews and to review and update, as necessary, the spheres of influence of cities and special districts.

#### **SECTION 3.2.4 CURRENT ROLE AND PURPOSES OF SOI BOUNDARIES**

Sphere of Influence boundaries serve multiple purposes and may be used to:

- Promote orderly urban development;
- Promote cooperative planning efforts among cities, the county and special districts to address concerns regarding land use and development standards, premature conversion of agricultural and open space lands and efficient provision of public services;
- Serve as a master plan for future local government reorganization by providing long range guidance for efficient provision of public services; shaping logical governmental entities able to provide services in the most economic manner, avoiding expensive duplication of services or facilities;
- Guide consideration of proposals and studies for changes of organization or reorganization.

#### **SECTION 3.2.5 SOI ADOPTION AND AMENDMENT POLICIES**

Santa Clara LAFCO's policies for SOIs reflect the fundamental mandates of state law, the specific roles of SOIs within Santa Clara County, and appropriate procedural considerations for future changes to SOIs. The following are Santa Clara LAFCO's policies regarding the adoption, updating, and amendment of spheres of influence:

1. **Mandate.** Consistent with GC §56425(a), LAFCO must adopt and maintain a SOI for each city and special district.
2. **Consistency with SOI:** Pursuant to GC §56375.5, LAFCO cannot take actions that are inconsistent with a SOI.
3. **Timing of Initial Adoption.** State law (GC §56426.5) directs LAFCOs to establish SOIs within one year of the effective date of formation of a special district or incorporation of a new city.
4. **Review and Updates.** Consistent with GC §56425(g), LAFCO shall review and update as necessary, each sphere of influence every five years.
5. **Initiation.** Pursuant to GC §56428(a), any person or local agency may file a written request and application with the LAFCO Executive Officer requesting LAFCO to amend an adopted SOI. Although determination of the SOI is a LAFCO responsibility, LAFCO encourages the participation of the subject city or special district and other stakeholders.

6. **Statement of Determinations.** Pursuant to GC §56425(e), in determining a SOI for a city or special district, LAFCO must consider and prepare a written statement of determinations regarding the following:
  - a. The present and planned land uses in the area, including agricultural and open space lands;
  - b. The present and probable need for public facilities and services in the area;
  - c. The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide;
  - d. The existence of any social or economic communities of interest in the area if the Commission determines that they are relevant to the agency;
  - e. For an update of the SOI of a city or special district that provides public facilities or services related to sewers, municipal or industrial water, or structural fire protection, the present and probable need for those public facilities and services of any disadvantaged unincorporated communities within the existing SOI.
7. **Establishment of Special District Function and Classes of Service.** Additionally, when adopting, amending, or updating the SOI for a special district, LAFCO shall establish the nature, location, and extent of any functions or classes of services provided by existing districts and may require existing districts to file written statements with LAFCO specifying the functions or classes of service provided by the districts. [GC §56425 (i), (j)]
8. **Service Review Requirement.** Consistent with GC §56430, LAFCO will prepare a service review prior to or in conjunction with the establishment or update of the SOI unless LAFCO determines that a prior service review is adequate. A SOI amendment that does not have any adverse regional, planning, economic, service, or environmental impacts will not require a service review.
9. **Consistency with Service Reviews.** LAFCO will consider applicable service reviews when rendering SOI determinations and discourage SOI amendments that undermine service review determinations and recommendations.
10. **City SOIs and Annexation.** Inclusion of territory within a city SOI should not necessarily be seen as an indication that the city will either annex or develop such territory to urban levels. The USA boundary shall serve as an indication of a city's intent for annexation, urban development and provision of urban services.

11. **Overlapping SOIs.** Spheres of Influence for cities and special districts may overlap when both agencies expect to provide different services to the area.
12. **Special Districts Providing Urban Services Outside City USAs.** Consistent with the intent of the CUDPs that urban development should occur within city USAs, and that urban services necessary for urban development should only be provided within adopted USAs, SOIs for special districts which provide urban services outside USAs shall be aligned as closely as possible with existing city USAs. LAFCO shall discourage expansion of the SOI of a special district that would extend urban services for purposes of promoting new development in unincorporated areas outside city USAs.
13. **Service Duplication.** LAFCO will discourage duplications in service provision when establishing a new SOI or amending an existing SOI.
14. **Special District “Zero SOIs.”** Where a special district is coterminous with or lies substantially within the boundary or SOI of a city or another district which is capable of providing the service, the special district may be given a zero sphere of influence which encompasses no territory. The zero sphere of influence designation indicates LAFCO’s determination that after consideration of all factors in GC §56425, the agency should cease to exist and that its public service responsibilities should be re-allocated to another agency, as necessary, through consolidation, merger, dissolution or establishment as a subsidiary district.

The CKH Act specifies the criteria and procedures for the initiation of such subsequent reorganizations, and for the LAFCO review and approval process. Therefore, a zero SOI does not mean that LAFCO will automatically dissolve a district.

15. **City SOI Updates and Required Meeting with County.** Prior to a city submitting an application to LAFCO to update its SOI, the city shall complete the requirement contained in GC §56425(b) to meet with the County to discuss the proposed new SOI boundary and explore methods to reach agreement on development standards and planning and zoning requirements within the SOI. The purpose of this requirement is to consider city and County concerns and promote logical and orderly development within the SOI.

Pursuant to GC §56425(b) & (c), if an agreement is reached between the city and the County, the city must forward the agreement to LAFCO along with its application to update the SOI. LAFCO shall consider the agreement when determining the city’s SOI and give it great weight, to the extent that it is consistent with LAFCO policies. If LAFCO’s final SOI determinations are

consistent with the agreement, the city and the County must adopt the agreement at noticed public hearings. After the agreement is adopted by the city and county and reflected in their respective General Plans, any County-approved development within the SOI must be consistent with the agreement terms.

Pursuant to GC §56425(d), if no agreement is reached between the city and the County, the application may be submitted to LAFCO and LAFCO shall consider a SOI for the city consistent with LAFCO policies.

## CHAPTER 3.3 URBAN SERVICE AREA POLICIES

Adopted: 12/01/1971

Amended: 02/08/1973, 12/11/2002, 12/02/2024

### SECTION 3.3.1 INTRODUCTION

In Santa Clara County, Urban Service Areas (USAs) are geographic planning areas that encompass all lands, incorporated or unincorporated, intended to be urbanized and provided with urban services and infrastructure upon annexation to a city.

The definition and application of USAs in Santa Clara County are unique and are part of a long-standing countywide growth management framework referred to as the Countywide Urban Development Policies (CUDPs). Under these policies, urban expansion is to occur in an orderly, efficient, and planned manner within cities, which are solely responsible for planning and accommodating urban development within explicitly adopted USA boundaries whose location and expansion is subject to Santa Clara LAFCO approval.

The USAs were first proposed by each of the 15 cities and adopted by Santa Clara LAFCO in 1972-1973 as further documented in the Countywide Urban Development Policy # 1.4. With the continued implementation of the CUDPs since the early 1970s, Santa Clara LAFCO assumed a critical role as the arbiter of urban area expansion through the review and amendment of USAs. This role gives Santa Clara LAFCO the responsibility to protect natural resource lands while facilitating the development of vibrant, more sustainable communities. Santa Clara LAFCO's ongoing mission creates public value across Santa Clara County, limiting unnecessary urban expansion, promoting appropriate infill and redevelopment, minimizing public service costs, and preserving the remaining vital natural and open space resources from which the county as a whole benefits.

Because of its advance review and determination of USA boundaries, Santa Clara LAFCO does not review proposals for city annexation of unincorporated lands located within a city's USA. State law [Government Code (GC) §56757] gives cities in Santa Clara County the authority to conduct and approve such annexations within their USA boundaries if the proposals are initiated by city resolution and meet certain conditions.

### SECTION 3.3.2 URBAN SERVICE AREAS DEFINED

In Santa Clara County, USA boundaries delineate and differentiate those areas intended to be urbanized from those areas not intended to be urbanized. USAs include lands currently urbanized and annexed to cities and provided with urban services, as well as

unincorporated lands that a city intends to annex in order to develop those lands and provide them with urban services within five years.

USAs intentionally exclude natural resource lands, such as agricultural and open space lands; and lands deemed generally unsuited for urban development, such as bay lands, floodplains, wetlands, hillsides and mountainous lands, seismic and/or geologic hazard areas, and very high fire hazard areas.

### **SECTION 3.3.3 URBAN SERVICE AREA AMENDMENT PROCEDURAL POLICIES**

The following procedures apply for processing of urban service area amendment proposals:

1. **Initiation.** All USA amendments require Santa Clara LAFCO approval. An USA amendment request must be initiated by city council resolution and application to LAFCO.
2. **City Evaluation.** While a city may process requests for USA amendments on behalf of property owners, it is the city's responsibility as the LAFCO applicant to first evaluate whether the request is consistent with the applicable city, county, and LAFCO policies and determine whether the city supports the request.
3. **Pre-Application Meeting.** In order to aid the city's evaluation of an USA amendment request, LAFCO encourages the city to have a pre-application meeting with LAFCO staff as early as possible to discuss its USA amendment plans and obtain more information on the LAFCO policies and procedures that may apply to the specific proposal.
4. **Major General Plan Updates.** LAFCO requires that a city establish a stable baseline of its service plans and land use designations for LAFCO's evaluation of its USA amendment request. Therefore, LAFCO will not accept an USA amendment request from a city that is in the process of conducting a major General Plan update which involves changes to land use designations and service plans. LAFCO staff may consider limited exceptions on a case-by-case basis.
5. **USA Amendment Request Frequency.** Each city may submit an USA amendment request to LAFCO once in a calendar year. The date the application is heard by LAFCO shall determine the calendar year. USA amendment requests shall be limited to once a year in order to encourage a city to consider and understand the comprehensive impacts of USA amendments on its services, facilities / infrastructure, fiscal health, and the environment; and to ensure that

LAFCO considers such requests in a similarly comprehensive manner. Until a city's application has been heard and acted upon by LAFCO, no further USA amendment requests will be accepted for filing from that city.

6. **Exception to Once-a-Year Rule.** The Commission may make an exception to the once-a-year limitation for USA amendment requests when such amendment is needed to carry out some special institutional development or activity that is in the public interest. Such exceptions shall not normally be extended in connection with proposed residential, commercial, or industrial development.
7. **CEQA.** An USA amendment proposal is considered a project under the California Environmental Quality Act (CEQA). Pursuant to CEQA, a city would be the Lead Agency for such a proposal and LAFCO would be a Responsible Agency. Therefore, LAFCO is required to rely on the city's CEQA documentation (initial study, negative / mitigated negative declaration, environmental impact report, etc.), with few exceptions. Cities must consult with LAFCO on the scoping of CEQA documentation for the potential proposal.

#### **SECTION 3.3.4 URBAN SERVICE AREA AMENDMENT POLICIES AND EVALUATION CRITERIA**

Review and amendment of USA boundaries is Santa Clara LAFCO's primary vehicle for ensuring orderly city growth. Therefore, Santa Clara LAFCO shall carefully consider all USA amendment requests, consistent with LAFCO policies and State law.

USA amendment proposals may involve expansion of an USA to accommodate future growth; retraction of an USA to better align with city's growth and open space / agricultural land preservation plans, and adjustments between cities' USA boundaries to facilitate island annexations and logical boundaries; and enhance service delivery and governance efficiencies.

Consistent with the CUDPs, it is the goal of Santa Clara LAFCO that future urban development and other necessary public facilities such as schools and recreational facilities should be planned and accommodated within existing urban areas, through infill and redevelopment, rather than through the expansion of USA boundaries. Such city-centered, climate-smart growth policies play a critical role in preventing sprawl, ensuring efficient delivery of services, promoting more efficient use of existing urbanized areas, and preserving open space and agricultural lands.

A complementary goal is that where expansion is necessary, it should be done to accommodate the demonstrated need for urban growth in as compact and efficient manner as possible, supportive of the above goal and rationale.

To further these goals and in accordance with GC §56668, Santa Clara LAFCO must take into account many factors when considering an USA amendment proposal. Certain factors may be more applicable or more critical than others, depending on the specific proposal and circumstances. The following are Santa Clara LAFCO's policies and evaluative criteria for considering USA amendment proposals:

1. **Infill and Efficient Development Patterns.** In order to promote efficient development patterns and compact infill development and prevent the conversion of agricultural land in accordance with GC §56377, Santa Clara LAFCO shall discourage amendment proposals that seek to expand the USA when a city has a more than 5-year supply of vacant land within its existing USA or when a city does not clearly demonstrate the need for the USA amendment. LAFCO will consider the following evaluative criteria:
  - a. The city's explanation for why the USA amendment is necessary, why infill development is not undertaken first, and how an orderly, efficient growth pattern, consistent with LAFCO mandates will be maintained
  - b. The city's current vacant lands inventory for the same or similar proposed uses prepared in accordance with Santa Clara LAFCO's Vacant Lands Methodology included as *Exhibit 3.3-A*. The vacant lands inventory is an informational tool to help evaluate the availability of vacant lands within the city. If a city has special conditions that do not align with LAFCO's methodology, it may also prepare an alternate vacant lands inventory and explain why the alternate analysis is more appropriate, for LAFCO's consideration.
  - c. Whether the city has a more than 5-years supply of vacant lands that can be developed for the same or similar proposed uses as determined by the LAFCO Vacant Lands Methodology. If the city has more than 5-years supply, LAFCO shall consider the city's explanation for the need for more lands at this time, along with all the other factors for considering USA amendment proposals.
  - d. Whether and to what extent the city has developed and successfully implemented targeted strategies such as fiscal and regulatory incentives to generate active and more efficient use of vacant and underutilized lands within its existing boundaries
  - e. Whether the city has planned for and implemented policies for encouraging higher density development in order to use land more efficiently

- f. Whether the City has applied an appropriate general plan and pre-zoning designation to the proposal area
- g. Whether the proposed urban development is imminent or is likely to occur within the proposal area within the next 5 years
- h. Whether the city has planned for locating its community's facility needs such as schools, and recreational facilities, within its existing boundaries

2. **Impacts to Agricultural and Open Space Lands.** In order to preserve agricultural and open space lands, Santa Clara LAFCO shall discourage amendment proposals that include or adversely impact agricultural lands and open space, consistent with GC §56377(a). LAFCO will consider:

- a. Whether the proposal will result in the conversion of prime agricultural lands. As defined in GC §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:
  - i. 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
  - ii. Land that qualifies for rating 80 through 100 Storie Index Rating
  - iii. 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
  - iv. 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
  - v. 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

- b. Pursuant to GC §56668 and GC §56668(e), whether the proposal will adversely impact the continued agricultural productivity and viability of the proposal area, and/or adjacent / surrounding lands, including but not limited to the following factors:
  - i. Whether the proposal area, and/or adjacent / surrounding lands are located within an Agricultural Resource Area or Agricultural Preservation Area designated by the County, a city, or another public land conservation entity
  - ii. Whether the proposal area, and/or adjacent / surrounding lands are located within a designated Agricultural Zoning District in an adopted County and/or City Zoning Ordinance
  - iii. Whether the proposal area, and/or adjacent / surrounding lands are designated “Agriculture” in an adopted County and/or City General Plan
  - iv. Whether the proposal would introduce incompatible land uses into an agricultural area, generate urban / agricultural conflicts, or promote land speculation and disinvestment in agriculture – disrupting the conditions necessary for agriculture to thrive
  - v. Whether public facilities or infrastructure (e.g., such as roads, sanitary sewers, water lines, stormwater drainage facilities) related to the proposal would be sized or situated as to facilitate conversion of agricultural lands located outside of the proposal area, or will be extended through adjacent / surrounding agricultural lands
  - vi. Whether natural or man-made barriers serve to buffer agricultural or existing open space lands outside of the proposal area from the effects of the proposal
  - vii. Whether the proposal area, and/or adjacent / surrounding lands include lands that are subject to a Williamson Act contract or Farmland Security Zone contract
  - viii. Whether the proposal area, and/or adjacent / surrounding lands are under an agricultural or open space conservation easement
  - ix. Whether the proposal area, and/or adjacent / surrounding lands are designated in the Department of Conservation’s Farmland Mapping and Monitoring Program as Prime Farmland, Farmland of Statewide Importance, Unique Farmland, or Farmland of Local Importance

- c. The city's explanation for why the conversion of agricultural lands and/or open space is necessary to promote the planned, orderly, efficient development of the city
- d. Whether the city has developed and successfully implemented measures / plans to first avoid and minimize the conversion of agricultural or open space lands prior to bringing forward a proposal that involves conversion of agricultural or open space lands; and in instances where it is not possible to avoid or minimize conversion, whether the proposal contains mitigation for the conversion of any such lands consistent with LAFCO policies
- e. If an amendment proposal includes agricultural or open space lands for the purpose of preservation, LAFCO will require an explanation of why the inclusion of agricultural or open space lands is necessary and a demonstration that effective measures have been adopted for permanently protecting the agricultural or open space status of the affected territory. Such measures may include:
  - i. Acquisition and transfer of ownership of agricultural land or transfer of agricultural conservation easements to an agricultural conservation entity for permanent protection of the agricultural land
  - ii. Acquisition and transfer of ownership of open space or transfer of open space easements to a conservation entity for permanent protection of the open space land

3. **Logical, Orderly Boundaries.** LAFCO shall discourage amendment proposals that will not result in logical and orderly boundaries. LAFCO will consider:

- a. Whether the boundaries of the proposal are contiguous with the current USA [GC §56757(c)(6) and GC §56668(f)]
- b. Whether the proposal will result in islands, flags, peninsulas, corridors or other irregular boundary configurations which are illogical and/or difficult to serve [GC §56757(c)(4)]
- c. Whether the boundaries of the proposal follow natural and man-made features, such as ridge lines, drainage areas, watercourses, edges of right-of-way, and lines of assessment or ownership [GC §56668(a)]
- d. Whether the proposed boundaries would result in an intrusion of urbanization into a predominantly agricultural or rural area [GC §56668(d)]

4. **Avoid Natural Hazard Lands.** In order to minimize public exposure to risks associated with natural hazards and limit unplanned public costs to maintain and repair public infrastructure, LAFCO shall discourage USA expansions into lands designated very high fire hazard zones and into lands subject to other natural hazards such as geologic / seismic hazards, flood hazards, and fire hazards, Pursuant to GC §56668(q), LAFCO will consider maps and information related to fire hazards, FEMA flood zones, earthquake fault zones and landslide hazard zones contained in:
  - a. A local hazard mitigation plan
  - b. A safety element of a general plan
  - c. Any maps that identify land as a very high fire hazard severity zone pursuant to GC §51178 or maps that identify land determined to be in a state responsibility area pursuant to §4102 of the Public Resources Code
5. **Availability of Adequate Water Supply.** In order to ensure timely availability of water supplies adequate for existing and planned future needs, LAFCO shall discourage amendment proposals that do not clearly demonstrate that an adequate water supply is available to the proposal area(s) pursuant to GC §65352.5, and that water proposed to be provided to new areas does not include supplies needed for unserved properties already within the city, the city's USA or other properties already charged for city water services. In determining water availability pursuant to GC §56668(l), LAFCO will consider the following:
  - a. The city's plan for providing water service to the area and its statement of existing water supply including:
    - i. The current version of the city's or water supplier's urban water management plan and capital improvement program or plan, and the current version of the groundwater management agency's groundwater sustainability plan
    - ii. A description of the source or sources of the water supply currently available to the city taking into account historical data concerning wet, normal, and dry runoff years
    - iii. The quantity of surface and groundwater that was purveyed by the city / water supplier in each of the previous five years including a description of the number of service units available; number of service units currently allocated; number of service units that are anticipating future service within the city and its current USA boundary and number of service units needed for the proposal area

- b. Whether the city is able to provide adequate water supply to the proposal area in the next 5 years, including drought years, while reserving capacity for areas within the city and USA that have not yet developed
- c. Whether the city is capable of providing adequate services when needed to areas already in the city, in the city's USA or to other properties entitled to service
- d. If capacity is not reserved for unserved property within the city and its USA, the current estimate of potential unserved properties and related water supply needs
- e. Whether additional infrastructure and/or new water supplies are necessary to accommodate future development or increases in service demand. If so, whether plans, permits and financing plans are in place to ensure that infrastructure and supply are available when necessary, including compliance with required administrative and legislated processes, such as CEQA review, CEQA mitigation monitoring plans, or State Water Resources Board allocation permits. If permits are not current or in process, or allocations approved, whether approval is expected
- f. Whether facilities or services comply with environmental and safety standards so as to permit acquisition, treatment, and distribution of necessary water

6. **Ability to Provide and Fund Public Services and Infrastructure.** In order to ensure efficient service provision, LAFCO shall discourage amendment proposals that do not clearly demonstrate that the city has the ability to provide and fund services to the proposal area without detracting from current service levels within the city, and in areas that the city has already committed to serve. Consistent with GC §56668(b) & (k), LAFCO will consider:

- a. The city's plan for providing services (such as sewer, water, police, fire, stormwater, garbage disposal, library, lighting, parks, and street maintenance) within the proposal area prepared in accordance with LAFCO's Guide for preparing a Plan for Service included as *Exhibit 3.3-B*, and which pursuant to GC §56653 shall include:
  - i. An enumeration and description of services currently provided and/or to be provided and the corresponding service provider
  - ii. The level and range of those services as well as detailed information on the size, location, and capacity of infrastructure both existing and required

- iii. Estimated time frame for service delivery
- iv. A statement indicating capital improvements, or upgrading of structures, roads, sewers, water facilities or other conditions that the city would require in the affected territory prior to providing service
- v. A description of how the services will be financed

- b. Whether the proposal is expected to result in any significant increase in service needs and/or new facilities, personnel, apparatus or equipment as a result of adding the proposal area
- c. Whether the anticipated increase in service needs (e.g., increase in calls for fire and police services) and/or new facilities are likely to result in an increase in service costs and how the city plans to finance the anticipated increase in service costs
- d. Whether the proposal will require the construction of new infrastructure (e.g., sanitary sewers, water mains, stormwater drainage facilities) and/or expansion of existing infrastructure (e.g., wastewater treatment plant, water treatment plant) and how the city plans to address the associated fiscal impacts
- e. The ability of school districts to provide school facilities and whether there would be sufficient school capacity available to serve the affected territory at the time of development

7. **Fiscal Sustainability.** In order to ensure fiscal sustainability, LAFCO shall discourage amendment proposals that would have adverse financial impacts on the provision of government services. Consistent with GC §56668(c) & (k), LAFCO will consider the following:

- a. Financial impacts to the County, and to the affected city, special districts, and school districts and the feasibility of measures identified to mitigate any adverse impacts
- b. Existence of any significant citywide infrastructure maintenance funding gaps and feasibility of the measures identified by the city to address such gaps
- c. The city's anticipated need for major capital improvement projects related to water, wastewater, stormwater, roads, fire, and police services, and the feasibility of funding measures to address these needs
- d. City's reliance on reserves to address financial impacts and consistency with the city's adopted reserve policy

8. **Island Annexations.** In order to ensure efficient service provision and orderly growth and development, LAFCO shall discourage USA amendment proposals that seek to add new lands to a city's USA when a city has unincorporated islands existing within its current USA. LAFCO will consider:
  - a. Whether the city has initiated and completed annexation proceedings and/or adopted annexation plans and taken appropriate actions to annex its islands as recommended in LAFCO's Island Annexation Policies
  - b. The city's explanation of why annexation of the island(s) is not undertaken first
9. **Conformance with Service Reviews and Spheres of Influence.** In accordance with GC §56668(i), LAFCO shall consider the applicable service reviews and shall discourage amendment proposals that are inconsistent with adopted service review determinations and recommendations, or that are inconsistent with the LAFCO adopted sphere of influence for an affected local agency.
10. **Conformance with City and County General Plans.** In accordance with GC §56668(h), LAFCO shall consider whether the proposed USA amendment is consistent with the current city and county general plans and policies.
11. **Conformance with Regional Transportation Plan.** Consistent with GC §56668(g), LAFCO shall discourage USA amendment proposals that undermine the goals of the Regional Transportation Plan and Sustainable Communities Strategy prepared by the Metropolitan Transportation Commission (MTC) for the nine-county San Francisco Bay Area.
12. **Impacts on Housing.** LAFCO shall discourage USA amendment proposals that undermine Regional Housing Needs Allocation plans, reduce affordable housing stock, or propose additional urbanization without attention to affordable housing needs. LAFCO will consider:
  - a. The extent to which the proposal will affect a city or county in achieving their respective Regional Housing Needs Allocation plans as determined by Association of Bay Area Governments (ABAG), consistent with GC §56668(m)
  - b. Whether the proposal introduces urban uses into rural areas thus increasing the value of currently affordable rural area housing and reducing regional affordable housing supply
  - c. Whether the proposal directs growth away from agricultural / open space lands towards infill areas and encourages development of vacant land

within existing urban areas thus decreasing infrastructure costs and potentially housing construction costs

d. Whether funding of infrastructure to support development in the proposal area imposes an unfair burden on residents or customers within the existing boundaries thus impacting housing construction costs in the proposal area and within existing boundaries

13. **Environmental Justice.** In accordance with GC §56668(p), LAFCO will consider the extent to which the amendment proposal will promote environmental justice, specifically the fair treatment and meaningful involvement of people of all races, cultures, incomes, and national origins with respect to the location of public facilities and the provision of public services in order to ensure a healthy environment for all people such that the effects of pollution are not disproportionately borne by any particular populations or communities.

14. **Public Comments.** In accordance with GC §56668(j) & (n), LAFCO shall consider comments from any affected public agencies or other public agency, proponents, landowners, voters, interested parties and members of the public.

15. **Agricultural Worker Housing Needs.** In order to promote efficient development patterns and compact infill development and prevent the conversion of agricultural land in accordance with GC §56377, Santa Clara LAFCO shall encourage, to the extent possible, agricultural worker housing to be located within cities or their urban service areas, where necessary infrastructure, services, support resources, and the broader community already exists.

a. Agricultural workers are an essential component of Santa Clara County's agricultural industry and agricultural worker housing supports the preservation of open space and agricultural lands, continued sustainability of agriculture, delivery of agricultural produce, and continued viability of Santa Clara County's food system. Santa Clara LAFCO will give special consideration to USA amendment proposals that consist solely of agricultural worker housing and that meet both the following requirements:

i. The city seeking USA amendment has methods (e.g., requirements for recordation of deed restrictions and/or affordability covenants on the property) currently in place to ensure affordability and occupancy of the proposed agricultural worker housing for eligible agricultural workers over the long term and for not less than 55 years.

- ii. The proposed agricultural worker housing will be maintained and operated by a qualified affordable housing organization that has been certified pursuant to Health & Safety Code §17030.10, a public agency, or an employer providing housing.
- b. Santa Clara LAFCO shall consider the following in evaluating such proposals:
  - i. Whether the proposal fulfills the established need for agricultural worker housing and whether it is consistent with the city and/or County's long-term agricultural land conservation plans
  - ii. Whether the proposed development of agricultural worker housing is imminent or is likely to occur within the proposal area within the next 5 years in accordance with Policy #3.4.1(g)
  - iii. Whether the proposal will result in logical and orderly boundaries in accordance with Policy #3.4.3, and whether the city has the ability to provide and fund necessary public services and infrastructure in accordance with Policy #3.4.6

**EXHIBIT 3.3-A: SANTA CLARA LAFCO'S METHODOLOGY FOR PREPARING A VACANT LANDS INVENTORY**

**Policy objective that LAFCO seeks to achieve through the Vacant Lands Inventory**

LAFCO will use the information contained in a Vacant Lands Inventory to promote efficient use of land within a city's current boundaries prior to expanding its boundaries.

**What should a Vacant Lands Inventory Include?**

A vacant lands inventory provides information on the rate of development within the city and the amount of vacant land located within the city's USA.

The vacant lands inventory is a one-time snapshot of vacant and underutilized lands for the same or similar land uses within the city's urban service area and it must include the following:

- A map showing the location of vacant lands. In terms of scale, a city's general plan land-use diagram or map is appropriate.
- A corresponding table listing the vacant lands with APNs, parcel sizes, current general plan designation, allowed density, etc.

**Methodology for Preparing the Inventory**

The following definitions and methodology shall apply for the preparation of a vacant lands inventory:

- Vacant lands are undeveloped and/or underutilized lands (i.e., lands developed to less than their minimum development potential as identified in the city's current general plan and zoning ordinance) located within the city's Urban Service Area, that have no active building permit.
- The city's current general plan / zoning designations shall define the maximum development potential for the vacant lands.
- The calculation of the rate of absorption of vacant lands within a city shall be based on the average number of building permits issued by the city in the previous 10 years.

**Sample Table of Residential Vacant lands Inventory for City XYZ**

RESIDENTIAL LAND USES	VACANT LANDS (ACRES)	ALLOWED DENSITY (UNITS/ACRE)	MAXIMUM POTENTIAL UNITS
Rural Residential	150	1-2	300
Residential Neighborhood	115	3-8	920
Medium Density Residential	30	8-20	600
High Density Residential	25	21-40	1,000
Mixed Use Neighborhood	12	30-50	600
Specific Plan	52	500 units	500
<b>TOTALS</b>	<b>384</b>		<b>3,920 (A)</b>

**Sample Table of # of Residential Building permits issued by City XYZ in the last 10 years**

YEARS	# OF BUILDING PERMITS
Year 1	290
Year 2	277
Year 3	301
Year 4	329
Year 5	297
Year 6	318
Year 7	320
Year 8	412
Year 9	422
Year 10	450
<b>Average # of Building Permits</b>	<b>341.6 (B)</b>

**Sample Calculation of the Rate of Absorption of Vacant Land**

Years of residential development that City XYZ can accommodate within its existing vacant land = A/B  
= 3,920/341.6  
= **11.5 years**

**EXHIBIT 3.3-B: SANTA CLARA LAFCO'S GUIDE FOR PREPARING  
A PLAN FOR SERVICES**

**Policy objective that LAFCO seeks to achieve through the Plan for Services**

LAFCO will use the information contained in a Plan for Services to ensure that the proposed service provider is able to adequately provide services to the proposal area without detracting from current service levels within the service providers' current service area or in the areas the service provider has already committed to serve.

**What should a Plan for Service Contain?**

A Plan for Service describes the services that would be provided to the proposal area upon LAFCO approval of the proposal. It explains how and when the service provider would provide the services, how much the services would cost and how those costs would be financed and whether the services and costs are considered in the service providers' long range master plans, Capital Improvement Plans, and budgets. The Plan for Service should also include information on whether the service provider is able to meet its current service demand and describe any ongoing service or infrastructure deficiencies and the service provider's plan for addressing the deficiencies as specified in its master plans, Capital Improvement Plans, and budgets.

GC §56653 outlines the information that a Plan for Service must contain. Further clarification of the specific requirements is provided below:

1. An enumeration of current and proposed services (including but not limited to water, sewer, storm drainage, solid waste collection, fire, police, lighting, parks, library services, roads and schools) in the proposal area. A description of who currently provides the service and who would provide the service to the proposal area upon LAFCO's approval.
2. The level and range of the service provider's existing services / facilities / infrastructure that will be used to provide the desired services to the proposal area including detailed information on the extent, size, location and capacity of existing facilities and infrastructure that will be used to provide desired services to the proposal area.
  - 2.a. For each service, the capacity analysis should include:
    - The total capacity / service units of the current system
    - Number of service units already allocated
    - Number of service units within current boundaries anticipating future service

- Number of service units within the system available after providing service to areas within current boundaries that anticipate future service
- Number of service units required to serve the proposed project and whether there is enough capacity within the current system
- Number of service units proposed to be added to meet the demand

2.b. In the event there is a need to add service units to serve the proposed project, the applicant shall provide a plan for obtaining the capacity necessary to provide the service which must include the following information:

- Number of service units proposed to be added to meet the demand from the proposal area
- A description of the required facility or infrastructure (new or expansions), or additional personnel or equipment
- The viability and likely schedule for completion of the expanded capacity project, its viability, and its relation to the proposal and the proposal timeline
- A list of required administrative and legislated processes, such as CEQA review or State Water Resources Board allocation permits, including assessment of likelihood of approval of any permits and existence of pending or threatened legal or administrative challenges if known
- The planned total additional capacity
- The size and location of needed capital improvements
- The proposed project cost, financing plan and financing mechanisms including a description of the persons or properties who will be expected to bear project costs, and how much the costs will be
- Any proposed alternative projects if the preferred project cannot be completed.

3. The estimated time frame for service delivery to the proposal area
4. A statement indicating any capital improvements, or upgrading of structures, roads, sewer or water treatment facilities or other conditions the agency would impose or require within the affected territory prior to providing service if proposal is approved
5. A description of the cost of services and how the services will be financed

6. Agency's general statement of intent to provide services to the affected territory, indicating the agency's capability of providing the necessary services in a timely manner to the affected territory while being able to serve all areas within its current boundaries and without lowering the level of service provided to areas currently being served by the agency

## CHAPTER 3.4 ANNEXATION, DETACHMENT, AND REORGANIZATION POLICIES

Adopted: 4/01/1970

Amended: 12/11/2002, 12/04/2024

### SECTION 3.4.1 INTRODUCTION

Under generally applicable provisions of state law, Local Agency Formation Commissions (LAFCOs) for each county are designated as the sole approval authority for annexations, detachments, other changes of organization, and reorganizations of local agencies. However, in Santa Clara County, a city annexation or reorganization (e.g., annexation to a city and detachment from one or more special districts) proposed within a city's Urban Service Area (USA) may qualify for a "city-conducted" process, pursuant to Government Code (GC) §56757. Such proposals are not heard by LAFCO, but by the City Council of the appropriate city as described further below.

The policies and procedures for annexation to cities are thus differentiated from those applicable to special districts in Santa Clara County.

The State law definitions of the types of boundary changes addressed in this chapter include the following:

- **Annexation** is a change of organization involving "the inclusion, attachment, or addition of territory to a city or special district." (GC §56017)
- **Detachment** is a change of organization involving "the exclusion, deletion, or removal from a city or district of any portion of the territory of that city or special district." (GC §56033)
- **Reorganization** is the term used for two or more concurrent changes of organizations (e.g., annexation / detachment from a city, and annexation / detachment from a special district) contained in a single proposal. (GC §56073)

### SECTION 3.4.2 CITY ANNEXATIONS, DETACHMENTS AND REORGANIZATIONS

The Countywide Urban Development Policies (CUDPs), jointly adopted by LAFCO, the County and the 15 cities, stipulate that urban development is to occur within cities, rather than in the unincorporated areas; and that development that requires urban services should annex to cities. LAFCO has adopted USAs for each of the cities that include lands currently urbanized and annexed to cities and provided with urban services, as well as unincorporated lands that a city intends to annex in order to develop those lands and provide them with urban services within five years. Therefore, lands

that a city intends to annex must first be located within the city's USA, as approved by LAFCO.

Historically, some cities have areas within their city limits that lie outside their USAs. Even though these areas are outside the USA, the city is not required to seek LAFCO approval to provide services to them, as long as the areas are within the city limits.

Annexation of any remaining unincorporated lands within adopted USAs (i.e., islands) has been a shared goal for the cities, County, and LAFCO. LAFCO policy encourages cities to annex such unincorporated lands in order to accommodate needed growth. (Chapter 6: Island Annexation Policies). The special allowance for “city-conducted” annexations as defined below is also intended to encourage and facilitate annexation of unincorporated lands within USAs.

The following are policies, and evaluative criteria and/or requirements for city annexations.

1. **City-Conducted Annexation.** Pursuant to GC §56757, in Santa Clara County, an annexation or a reorganization proposal that includes city annexation of unincorporated lands located within the USA of a city is not reviewed by LAFCO if the annexation or reorganization proposal is initiated by city council resolution. Further, the city council is required to conduct and approve the annexation or reorganization proposal after making all the following findings:
  - a. The unincorporated territory is located within the USA of the city as adopted by LAFCO.
  - b. The County Surveyor has determined the boundaries of the proposal to be definite and certain, and in compliance with LAFCO's Road Annexation Policies as listed in Policy #4.2.4. The city shall reimburse the county for the actual costs incurred by the County Surveyor in making this determination.
  - c. The proposal does not split lines of assessment or ownership.
  - d. The proposal does not create islands or areas in which it would be difficult to provide municipal services.
  - e. The proposal is consistent with the adopted general plan of the city.
  - f. The territory is contiguous to existing city limits.
  - g. The city has complied with all conditions imposed by LAFCO for inclusion of the territory in the USA of the city.

2. **Pre-Zoning.** Consistent with GC §56375(a)(7), Santa Clara LAFCO requires pre-zoning of lands proposed for city annexation. Pre-zoning must be consistent with the city general plan designation for the lands. Both the pre-zoning and the general plan designation shall be considered in reviewing a city annexation proposal.
3. **Change of Pre-Zoning Limitation.** Pursuant to GC §56375(e), no subsequent change may be made to the city general plan or the zoning designations of the annexed territory that is not in conformance to the pre-zoning designations for a period of two years after the completion of the annexation, unless the city council makes a finding at a public hearing that a substantial change has occurred in the circumstances that necessitate the change.
4. **Annexation of Roads.** Cities shall annex appropriate segments of roads, freeways, highways, expressways, private roads or railroad rights-of-way, adjacent to or within the proposed annexation boundaries to ensure logical boundaries and efficient provision of public services. A city annexation proposal shall be designed to include:
  - a. A continuous section of roadway sufficient in length to allow road maintenance, and provision of other services such as policing of the street, fire protection, street maintenance, solid waste collection / disposal, by a single jurisdiction in an efficient manner without service duplication.
  - b. Full-width sections of the street right-of-way to provide single-agency oversight, except that when a street is the boundary line between two cities, the centerline of the street may be used as the boundary.
  - c. Full-width street sections in increments of not less than one thousand linear feet, or the distance between two consecutive intersections, where 50 percent or more of the frontage on both sides of the street in said increment has been or is to be included in the city.
  - d. Existing short segments of county-maintained road to provide single-agency oversight of a full-width section of the road.
5. **Ability to Provide Public Services / Infrastructure.** Cities shall assume responsibility for ensuring that the annexed territory receives a full range of city services, and the city must clearly demonstrate its ability to provide services to the area proposed for annexation without detracting from current service levels within the city.

6. **Concurrent Detachment from Special Districts.** Cities shall concurrently detach the affected territory from special districts that will no longer provide service upon annexation to the city.
7. **Annexation to Special Districts for Services.** Where city annexations necessitate annexation to a special district in order to meet service needs, annexation of territory to the special district is required with consent from the special district. If the annexation territory is located outside the sphere of influence of the special district, LAFCO approval for an amendment of the special district sphere of influence and for annexation must be obtained.
8. **Annexation of Lands Under Williamson Act.** Pursuant to GC §56856.5, annexation of territory under Williamson Act Contract to a city or special district that would provide facilities or services related to sewers, nonagricultural water, or streets or roads shall be prohibited unless these facilities and services benefit land uses that are allowed under the Williamson Act Contract.
  - a. In evaluating such annexation proposals that involve Williamson Act lands, LAFCO will consider:
    - i. Whether the city or special district will limit the provision of urban services or facilities related to sewer, non-agricultural water or streets and roads to the proposal area
    - ii. Whether the city that would administer the contract after annexation has adopted policies and feasible implementation measures applicable to the affected territory ensuring the continuation of agricultural use and other uses allowable under the contract on a long-term basis
    - iii. Whether the proposal encourages or is necessary to provide planned, well-ordered, and efficient urban development patterns that include appropriate consideration of the preservation of open-space lands within those urban development patterns
  - b. In approving city annexation of land subject to a Williamson Act Contract, pursuant to GC §56754, LAFCO shall, based on substantial evidence, determine one of the following:
    - i. That the city shall succeed to the rights, duties, and powers of the county pursuant to GC §51243; or
    - ii. That the city may exercise its options to not succeed to the rights, duties, and powers of the county pursuant to GC §51243.5.

9. **Conformance with Service Reviews and Spheres of Influence.** City annexations shall be consistent with city Spheres of Influence (SOI) and shall not undermine adopted service review determinations or recommendations.
10. **Annexation of Lands Outside a City's USA for Permanent Preservation of Open Space.** In general, cities are precluded from annexing lands outside adopted USA boundaries. If such annexation is to be considered, LAFCO is the approval authority. LAFCO strongly discourages city annexation of territory located outside a city's USA, unless consistent with the mission and policies of LAFCO.

LAFCO recognizes that in some limited circumstances, city annexations outside USAs may be appropriate, such as annexations that help promote permanent preservation of open space lands. Such annexation proposals outside city USAs will be considered on their merits on a case-by-case basis, and LAFCO shall reconsider allowance of exceptions to the general rule if it appears a pattern of such requests is developing.

In evaluating such annexation proposals, LAFCO shall consider, among other things, the following:

  - a. The city's explanation for why the annexation is necessary, why an USA expansion is not appropriate prior to annexation, and how the annexation will result in the permanent preservation of open space.
  - b. Whether effective measures have been adopted for permanently protecting the open space status of the affected territory. Such measures may include acquisition and transfer of ownership of open space or transfer of open space conservation easements to a conservation entity for permanent preservation of the open space.
  - c. Whether the city has applied an appropriate general plan and pre-zoning designation to the proposal area indicating the open space status of the lands.
11. **City Detachments subject to City Support.** Detachment of territory from a city requires LAFCO approval and pursuant to GC §56751, LAFCO may not approve a city detachment proposal if the city adopts and transmits a resolution seeking termination of the proposal.

### **SECTION 3.4.3 SPECIAL DISTRICT ANNEXATIONS, DETACHMENTS, AND REORGANIZATIONS**

LAFCO is the approval authority for all boundary changes for special districts. State law precludes LAFCO from approving a proposal to annex territory located outside the SOI of the affected special district. Therefore, territory proposed for annexation to a special district must first be located within the affected special district's SOI as approved by LAFCO.

If an annexation proposal includes territory that is located outside the affected special district's SOI, the proposal must include a request to LAFCO for an amendment to the SOI. LAFCO has adopted policies to help guide its consideration of SOI amendment proposals. Please see "Chapter 2. Sphere of Influence Policies" for further information.

In accordance with GC §56668, LAFCO must take into account many factors when considering special district annexation / detachment proposals. Certain factors may be more applicable or relevant than others, depending on the specific proposal and circumstances. The following are LAFCO's policies and evaluative criteria for special district annexation, detachment, and reorganization proposals:

1. **Consistency with Spheres of Influence** In order to promote orderly growth and development, and efficient service provision, and pursuant to GC §56375.5, LAFCO shall not approve a special district annexation proposal located outside of the affected special district's SOI.
2. **Conformance with Service Reviews.** LAFCO shall consider the applicable service reviews and shall discourage proposals that undermine adopted service review determinations or recommendations.
3. **Impacts to Agricultural and Open Space Lands.** In order to preserve agricultural lands and open space, LAFCO shall discourage proposals that include or adversely impact agricultural lands and open space, consistent with GC §56377(a) and GC §56668(e).
4. **Logical, Orderly Boundaries.** LAFCO shall discourage proposals that will not result in logical and orderly boundaries. LAFCO will consider:
  - a. Whether the boundaries of the proposal are contiguous with the existing district boundary [GC §56668(d) & (f)]
  - b. Whether the boundaries of the proposal are definite and certain, and whether the boundaries conform with lines of assessment or ownership [§56668(f)]

- c. Whether the proposal will result in islands, flags, peninsulas, corridors or other irregular boundary configurations which are illogical and/or difficult to serve [GC §56668(f)]
- d. Whether the boundaries of the proposal follow natural and man-made features, such as ridge lines, drainage areas, watercourses, and edges of right-of-way [GC §56668(a)]

5. **Special District Annexations to Provide Urban Services outside City USAs.** Consistent with the intent of the Countywide Urban Development Policies (CUDPs) and the County General Plan that prohibit urban development and the provision of urban services in unincorporated areas outside city USAs; and in order to promote efficient development patterns, and prevent the conversion of agricultural land, LAFCO shall discourage special district annexation proposals that would extend urban services such as sewer and water to unincorporated lands outside existing city USAs.

However, LAFCO recognizes that in some limited circumstances, a special district annexation proposal may be in response to an existing threat to public health and safety (e.g., existing septic system failures, well contaminations, or well failures) in the rural unincorporated area, outside city USAs. LAFCO shall consider the following criteria in evaluating such proposals on a case-by-case basis:

- a. Whether the property is currently developed
- b. Whether the threat to public health and safety is substantial and immediate as documented by the County Department of Environmental Health and whether there are no other feasible means of addressing the situation
- c. Whether the proposed boundaries would result in an intrusion of urbanization into a predominantly agricultural or rural area
- d. Whether public facilities or infrastructure related to the proposal would be sized to exceed the capacity needed to address the situation and/or the development
- e. Whether a pattern of such requests is developing, and if so, the cumulative impact of such requests. If a pattern of such requests is developing, LAFCO shall encourage affected agencies to develop and successfully implement measures / plans to first avoid and minimize such requests which may be growth inducing

6. **Ability to Provide and Fund Public Services and Infrastructure.** In order to ensure efficient service provision, LAFCO shall discourage proposals that do not clearly demonstrate that the special district has the ability to provide services to the proposal area without detracting from current service levels within the special district, and in areas that the special district has already committed to serve. Consistent with GC §56668(b) & (k), LAFCO will consider:
  - a. The special district's plan for providing services within the proposal area prepared in accordance with LAFCO's Guide for preparing a Plan for Services included as *Exhibit 3.3-B*, and which pursuant to GC §56653, shall include:
    - i. An enumeration and description of services currently provided and/or to be provided and the corresponding service provider
    - ii. The level and range of those services as well as detailed information on the size, location, and capacity of infrastructure both existing and required
    - iii. Estimated time frame for service delivery
    - iv. A statement indicating capital improvements, or upgrading of structures, roads, sewers, water facilities or other conditions that the special district would require in the affected territory prior to providing service
    - v. A description of how the services will be financed
  - b. Whether the proposal is expected to result in any significant increase in service needs and/or new facilities, personnel, apparatus or equipment as a result of adding the proposal area
  - c. Whether the anticipated increase in service needs (e.g., increase in calls for fire and police services) and/or new facilities are likely to result in an increase in service costs and how the special district plans to finance the anticipated increase in service costs
  - d. Whether the proposal will require the construction of new infrastructure and/or expansion of existing infrastructure and how the special district plans to address the associated fiscal impacts

## CHAPTER 3.5 OUT-OF-AGENCY SERVICE BY CONTRACT POLICIES

Adopted: 12/11/1996

Amended: 12/11/2002, 12/04/2024

### SECTION 3.5.1 INTRODUCTION

The term “out-of-agency service by contract” (OASC) refers to an agency such as a city or special district providing new or extended services by contract or agreement outside its jurisdictional boundaries.

Prior to 1994, cities and special districts in California could avoid a LAFCO’s review process for annexation and provide services by contract outside their boundaries without obtaining LAFCO approval. This circumvented the Legislature’s intent for LAFCOs to regulate city and special district boundaries which generally determine where a city or special district provides services; furthermore, it undermined a LAFCO’s ability to guide growth, and ensure orderly development and good planning of infrastructure and services.

To prevent such circumvention and strengthen LAFCO’s position to better address issues concerning growth and sprawl, the Legislature added Government Code (GC) §56133 which requires cities and special districts to first request and receive written approval from LAFCO before providing new or extended services by contract outside their jurisdictional boundaries. GC §56133 was enacted in 1993 as part of Assembly Bill No. 1335 and became effective on January 1, 1994. Over subsequent years, GC §56133 has been amended several times to clarify a LAFCO’s role in regulating service provision outside jurisdictional boundaries. In 2003, the law was revised to state that GC §56133 does not apply to service extensions that occurred on or before January 1, 2001.

### SECTION 3.5.2 PROCEDURAL POLICIES FOR OUT-OF-AGENCY SERVICE BY CONTRACT PROPOSALS

The following procedures apply for processing of OASC proposals:

1. **LAFCO approval.** Government Code §56133 requires that a city or special district must apply for and obtain LAFCO approval before providing new or extended services by contract or agreement outside its jurisdictional boundaries, unless exempt pursuant to GC §56133(e).

2. **Initiation.** An OASC application to Santa Clara LAFCO must be initiated by resolution of the city or special district that is proposing to provide the service beyond its jurisdictional boundaries.
3. **Pre-Application Meeting.** A city or special district that seeks to or receives a request to provide service outside its jurisdictional boundaries must first evaluate whether the OASC request is consistent with applicable local and Santa Clara LAFCO policies and determine whether it supports the request. In order to aid such evaluation, Santa Clara LAFCO encourages a city / special district to schedule a pre-application meeting with LAFCO staff as early as possible to discuss their OASC plans and obtain more information on the policies and procedures that may apply to the specific proposal. LAFCO staff shall also assist the city / special district in investigating annexation as an alternative to submitting a formal OASC application.
4. **LAFCO Determination of Exemptions.** It is Santa Clara LAFCO's policy to encourage local agencies to engage in cost sharing and pursue innovative partnerships while also ensuring that OASC activities do not undermine jurisdictional boundaries, reduce local agency accountability and transparency, or lead to unintended growth-inducing impacts. In order to appropriately balance these interests, Santa Clara LAFCO, and not the city or special district that would provide the service, shall determine if a proposed OASC is exempt from the requirement for LAFCO approval pursuant to exemptions in GC §56133(e). The following procedures apply:
  - a. The city or special district shall contact LAFCO staff for a determination on whether an OASC proposal would be eligible for an exemption under GC §56133(e). Such consultations may occur via phone or email communication. LAFCO encourages the city or district to contact LAFCO staff as early as possible to discuss its OASC plans and obtain information on the LAFCO policies and procedures that may apply to the specific proposal.
  - b. The Executive Officer in consultation with LAFCO Counsel, shall provide a determination on whether or not the OASC proposal is exempt, such determination shall be appealable to LAFCO as described below in (d).
  - c. The Executive Officer shall inform the Commission of the determination at the next available meeting, unless it is an exploratory and not a formal inquiry.
  - d. The city or special district, at no cost, may appeal the Executive Officer's determination on the exemption to LAFCO. The appeal must include

specific substantiation for the exemption and must be made within 10 business days of receiving the EO determination.

- e. The appeal shall be heard by LAFCO at its next available meeting that permits adequate public notification. If LAFCO determines that the exemption does not apply, the city or special district must apply for and obtain LAFCO approval before providing services by contract outside boundaries.
5. **Administrative Approval.** An administrative approval of an OASC, without consideration by LAFCO, may be allowed in situations that pose an urgent public health or safety concern. The administrative approval shall be made jointly by the LAFCO Chairperson (or Vice Chairperson if the Chair is not available) and the Executive Officer. Both must agree that an administrative approval of the OASC proposal is appropriate, based upon the following criteria:
  - a. The lack of service being requested constitutes an immediate threat to public health and safety as documented by the County Department of Environmental Health.
  - b. The property is currently developed.
  - c. There are physical constraints on the property that prohibit a conventional service delivery method typically suited to the unincorporated area (e.g., septic system, private well, etc.), and there are no other feasible means or solutions available for addressing the situation.

The Executive Officer shall inform the Commission on the administrative approval of a OASC proposal at the next regularly scheduled LAFCO meeting.

6. **CEQA.** An OASC proposal is considered a project under the California Environmental Quality Act (CEQA). The Lead Agency for an OASC proposal shall be either 1.) the city or the county with the land use approval authority for the development that would receive the service; or 2.) the city or the special district that would provide the service. Santa Clara LAFCO would be a Responsible Agency and is required to rely on the lead agency's CEQA documentation. The Lead Agencies must consult with LAFCO on the scoping of CEQA documentation for the potential proposal.
7. **Recordation of Agreement for Services.** OASC applications shall include a service agreement signed by all relevant parties including the agency that would provide the service and the property owner. Upon Santa Clara LAFCO approval of an OASC proposal and within 3 months of the date of approval, the signed

service agreement must be recorded with the Santa Clara County Recorder and submitted to LAFCO staff.

### **SECTION 3.5.3 POLICIES AND EVALUATION CRITERIA FOR OUT OF AGENCY SERVICE BY CONTRACT PROPOSALS**

Consistent with State law and the Countywide Urban Development Policies (CUDPs) jointly adopted by LAFCO, the County and the 15 cities, it is Santa Clara LAFCO's goal that local agencies provide services within their jurisdictional boundaries and not extend services outside jurisdictional boundaries if annexation is a feasible alternative, unless it is in response to an existing public health and safety threat. Furthermore, in order to prevent sprawl, ensure efficient delivery of services, promote more efficient use of existing urbanized areas, and preserve open space and agricultural lands, LAFCO discourages OACS proposals that support new development in the unincorporated areas, outside city Urban Service Areas (USAs).

To further these goals, Santa Clara LAFCO shall carefully consider and evaluate OASC proposals consistent with its policies and the CKH Act. In addition to any other applicable factors enumerated in GC §56668, Santa Clara LAFCO shall consider the following policies and factors in evaluating the impacts of an OASC proposal:

- 1. Conformance with Spheres of Influence.**
  - a. Pursuant to GC §56133(b), Santa Clara LAFCO may authorize a city or district to provide new or extended services outside its jurisdictional boundaries but within its sphere of influence, in anticipation of a later annexation.
  - b. Santa Clara LAFCO may authorize a city or district to provide new or extended services outside its SOI to respond to an existing or impending threat to public health and safety (as documented by the County Environmental Health Department) in accordance with GC §56133(c)(1), and after notification to any alternate service provider in accordance with GC §56133(c)(2).
- 2. Annexation as Alternative to OASC.** Where feasible and within Santa Clara LAFCO policy, annexation to the city or the special district that would provide the service is generally preferred to service extension outside its jurisdictional boundaries. Santa Clara LAFCO will consider whether annexation is a logical alternative to extending services beyond the jurisdictional boundaries of a local agency. An OASC proposal may be appropriate in certain limited cases where immediate annexation is not a feasible alternative due to lack of contiguity or other unique local circumstances.

In accordance with GC § 56133(b), Santa Clara LAFCO may approve a OASC proposal in anticipation of a future annexation if the agency is able to provide LAFCO with a resolution of intent to annex and with appropriate assurances which demonstrate that the OASC is an intermediate step toward eventual annexation. Such assurances will be evaluated on a case-by-case basis and should include all appropriate actions including and not limited to application of a pre-zoning designation, preparation of a plan for annexation, a provision in the service contract for the property owner to consent-to-a future annexation and/or to waive protest rights.

3. **Service Extensions into Unincorporated Area.** Consistent with the CUDPs and the County General Plan that prohibit urban development and the provision of urban services in unincorporated rural areas outside city USAs, Santa Clara LAFCO shall discourage OASC proposals that are intended to support new development in the unincorporated county, with the following two exceptions.
  - a. **Extensions to Address Existing Public Health and Safety Threat.** Santa Clara LAFCO recognizes that in some limited circumstances, an OASC proposal into the rural unincorporated area may be appropriate if it is the only way to resolve an existing threat to public health and safety (e.g., existing septic system failures, well contaminations, or well failures). Consistent with GC §56133(c), Santa Clara LAFCO shall consider the following criteria in evaluating such proposals on a case-by-case basis:
    - i. Whether the property is currently developed
    - ii. Whether the threat to public health and safety is substantial and immediate, as documented by the County Department of Environmental Health and whether there are any other feasible means of addressing the situation
    - iii. Whether the proposal would result in an intrusion of urbanization into a predominantly agricultural or rural area [GC §56668(d)]
    - iv. Whether a pattern of such requests is developing, and if so, the cumulative impact of such requests. If a pattern of such requests is developing, LAFCO shall encourage affected agencies to develop and successfully implement measures / plans to first avoid and minimize such requests which may be growth inducing
  - b. **Service Extensions to Agricultural Worker Housing.**
    - i. Agricultural workers are an essential component of Santa Clara County's agricultural industry, and agricultural worker housing

supports the preservation of open space and agricultural lands, continued sustainability of agriculture, delivery of agricultural produce, and continued viability of Santa Clara County's food system. Santa Clara LAFCO will give special consideration to OASC proposals that consist solely of agricultural worker housing and that meet both the following requirements:

- (1) The County has methods (e.g., requirements for recordation of deed restrictions and/or affordability covenants on the property) currently in place to ensure affordability and occupancy of the proposed agricultural worker housing for eligible agricultural workers over the long term and for not less than 55 years or for the duration of the approved use.
- (2) The proposed agricultural worker housing will be maintained and operated by a qualified affordable housing organization that has been certified pursuant to Health & Safety Code §17030.10, a public agency, or an employer providing housing.

ii. Santa Clara LAFCO shall consider the following in evaluating such proposals, in accordance with OASC Policy #5.3.2:

- (1) Whether the proposed housing is consistent with the County General Plan, Zoning ordinance and its policies / plans for agricultural land preservation
- (2) Whether the proposal fulfills the established need for agricultural worker housing and whether it is consistent with the city and /or County's long-term agricultural land conservation plans
- (3) Whether the proposed agricultural worker housing development is imminent or is likely to occur with the next 5 years
- (4) Whether the proposal minimizes the conversion of and/or impacts to agricultural lands, for example, by designating building envelopes, siting on lands of lesser agricultural value, etc.

4. **Public Health and Safety.** Pursuant to GC § 56133(c)(1), Santa Clara LAFCO shall consider whether the OASC proposal is in response to an existing or impending threat to public health and safety as determined and documented by the County Environmental Health Department.

5. **Ability to provide Public Services.** Consistent with GC §56668(k), Santa Clara LAFCO shall require OASC proposals to clearly demonstrate that the city / special district has the ability to provide the proposed service without detracting from current service levels within its existing service area and shall consider criteria listed in Policies #3.4.5, #3.4.6, and #3.4.7, as applicable.
6. **Conformance with General Plans and Policies.** Consistent with GC §56668(h), Santa Clara LAFCO shall consider whether the OASC proposal is consistent with the policies and general plans of all affected local agencies, including cities, special districts and the county.
7. **Growth Inducing Impacts.** Consistent with GC §56668(d), Santa Clara, LAFCO shall consider the growth-inducing impacts of the OASC proposal and discourage proposals that contribute to development of fringe areas or intrusion of urbanization into areas designated for non-urban uses. To limit growth inducing impacts, LAFCO shall consider whether public facilities or infrastructure related to the proposal would be sized to exceed the capacity needed for the proposed development and/or extended through agricultural, open space lands, or non-urban areas.
8. **Impacts to Agricultural and Open Space Lands.** Consistent with GC §56377(a), Santa Clara LAFCO shall discourage proposals that result in conversion of or have adverse impacts on agricultural or open space land and shall consider criteria in Policy #3.4.2(a. through d.).
9. **Conformance with Service Reviews.** Consistent with GC §56668(i), Santa Clara LAFCO shall consider the applicable service reviews and shall discourage OASC proposals that undermine adopted service review determinations or recommendations.
10. **Fire Protection Contracts.** Effective January 1, 2016, GC §56134 requires LAFCO approval of a fire protection contract or agreement that provides new or extended fire protection services outside a public agency's jurisdictional boundaries and meets either of the following thresholds: (1) transfers responsibility for providing services in more than 25 percent of the area within the jurisdictional boundaries of any public agency affected by the contract; or (2) changes the employment status of more than 25 percent of the employees of any public agency affected by the contract. Santa Clara LAFCO shall consider such OASC proposals for fire protection contracts pursuant to GC §56134.

The Commission will review such proposals for consistency with the required findings of GC §56134(h)(2)(i) & (j), as well as the overall purposes of LAFCO that encourage the efficient provision of government services.

## **CHAPTER 3.6**

### **ISLAND ANNEXATION POLICIES**

Adopted: 2/09/2005

Amended: 10/14/2009, 12/04/2024

#### **SECTION 3.6.1 INTRODUCTION**

In Santa Clara County, unincorporated land that is located within a city's Urban Service Area (USA) is considered an island. Over time, the cities have largely annexed most of the lands now within the USAs, through a combination of resident-initiated efforts, County and city programmatic efforts to annex whole islands, or on a parcel-by-parcel basis as a pre-requisite to new development or new land uses. However, some islands persist, large and small, which continue to be the subject of ongoing policy matters and annexation efforts.

The Countywide Urban Development Policies (CUDPs) stipulate that urban unincorporated islands within USAs should ultimately be annexed into their surrounding cities, so that cities have responsibility for urban services and land use authority over all lands within their USA boundaries. LAFCO has adopted USAs for cities, that include lands currently urbanized and annexed to cities and provided with urban services, as well as unincorporated lands (i.e., unincorporated urban islands) that a city intends to annex in order to develop those lands and provide them with urban services within five years.

#### **SECTION 3.6.2 HISTORY OF UNINCORPORATED URBAN ISLANDS**

The USAs of many cities contain unincorporated islands. These islands are largely a result of development that occurred in the County in the 1950s and 1960s (prior to the adoption of the CUDPs). Immediately after World War II, most of the North Valley was unincorporated, agricultural, and cities had just begun to expand and develop. During this time, rapid urban development was often scattered, discontinuous, and not necessarily required to be within cities. This resulted in some unincorporated areas being developed, while city boundaries became more sprawling and irregular. Furthermore, as urban development and city annexation continued outward, some unincorporated areas were leapfrogged over and left under County jurisdiction, some remaining agricultural, some partly developed.

Historically, it has not been the role of the County government to provide urban services and infrastructure. As a result, the County has few mechanisms or resources for providing and maintaining urban infrastructure and services. The issue is further

complicated by the inefficiencies of having to ensure that services are provided for many small, widely scattered developed areas that are surrounded or substantially surrounded by cities.

Specific services in some unincorporated urban islands are provided by special districts. Residents of these areas generally receive urban levels of service for the specialized services that are provided by the districts. However, the districts do not provide a full range of services, and it is similarly inefficient to have multiple special districts providing one or two specific services to small, scattered areas.

In other cases, residents of urban unincorporated islands may utilize city-provided services for which they pay no property taxes to the city. To minimize the complexities and inequities of urban service provision and to provide more regular and logical city boundaries, the islands within USAs should be annexed to cities. In fulfillment of that fundamental policy, over the past 50 years, the vast majority of the urban unincorporated islands that existed in the 1970s have been annexed into cities, with the assistance of LAFCO and the County.

Nonetheless, at present, there still remain many unincorporated islands in the county, the majority of which are 150 acres or smaller. They are scattered across the county, from Gilroy to Mountain View, and from Los Gatos to the eastern edges of San Jose.

### **SECTION 3.6.3 LEGISLATIVE HISTORY**

LAFCO law includes various provisions that encourage the annexation of existing islands and discourage the creation of new islands. Moreover, since the late 1970s, State law has been amended numerous times to create additional provisions to encourage and facilitate the annexation of unincorporated islands into cities. In so doing, the state legislature has progressively and increasingly recognized the importance of island annexation to well-functioning urban areas and the relationship of such policies to other related planning goals of the state, such as curbing sprawl and preserving farmland.

In 2001, the State Legislature enacted the Cortese-Knox-Hertzberg Local Government Reorganization Act. One of the provisions of the Act allowed island annexations to occur through a streamlined process that does not require protest proceedings or elections, provided that the island meets specific criteria. In 2001, this provision applied to unincorporated islands up to 75 acres in size. In 2004 this provision was further amended to apply to islands up to 150 acres in size. This provision was originally set to expire on December 31, 2014. However, effective January 1, 2014, the State legislature removed the sunset date and made the streamlined island annexation provision permanent.

Currently, State law requires LAFCO to approve island annexations and waive protest proceedings, after notice and hearing, if the island annexation meets all the criteria outlined in Government Code (GC) §56375.3. This provision is limited to islands that do not exceed 150 acres in size as of January 1, 2014 pursuant to GC §56375.4. However, in Santa Clara County, pursuant to GC §56757, city annexations, including island annexations, are not decided by LAFCO, but by the City Council of the applicable city, as explained in LAFCO Policy #4.2.1 (Annexation, Detachment, and Reorganization Policies).

#### **SECTION 3.6.4 ISLAND ANNEXATION POLICIES**

In order to fulfill the intent of the State Legislature, implement the CUDPs, and encourage efficient service provision and orderly growth and development, LAFCO supports and encourages cities to annex unincorporated islands within their USAs.

LAFCO has adopted the following policies to encourage the timely annexation of islands:

1. **Encourage Island Annexation.** LAFCO will encourage island annexations to cities and collaborate with the cities and the County in facilitating annexation of islands.
2. **Annex Entire Islands.** Where feasible, and in furtherance of goals to support orderly growth and development, cities are encouraged to annex entire islands, rather than to conduct single parcel annexations.
3. **Streamlined Island Annexations.** State law provides a streamlined process for annexation of entire islands that do not exceed 150 acres in size (as of January 1, 2014) and that meet all of the criteria outlined in GC §56375.3.
4. **LAFCO Island Annexation Program.** In order to encourage cities to annex entire islands, LAFCO offers the following assistance:
  - a. LAFCO will provide a fee waiver for annexations that result in elimination of entire unincorporated islands. This fee waiver will remain effective until rescinded by the commission.
  - b. LAFCO will provide information and expertise on the island annexation procedures to cities. LAFCO will develop and provide process flow charts, and templates for public hearing notices and annexation resolutions to cities. LAFCO staff will conduct workshops for cities staff or meet with individual cities to provide information on the island annexation process.
  - c. LAFCO will work with the County, the cities and other interested parties / agencies to find ways to reduce or share the cost of processing island annexations.

5. **Island Annexations Before Seeking USA Expansion.** In the interest of orderly growth and development, cities should annex urban unincorporated islands existing within their current USAs, before seeking to add new lands to their USAs.

Prior to seeking any USA amendment, except if the USA amendment is to resolve a significant, demonstrable public health and safety issue or if the USA amendment is a minor corrective action, the city should:

- a. Initiate and complete annexation proceedings pursuant to GC §56375.3(a)(1), for all unincorporated islands that meet the provisions of GC §56375.3, unless the island constitutes publicly owned land, and
- b. For any city that has unincorporated islands larger than 150 acres, the city is strongly encouraged to adopt an annexation plan for each of the islands after holding community meetings, to apply pre-zoning designation(s); and to adopt resolutions to initiate annexation, as appropriate.

6. **Align Development Standards.** LAFCO encourages the cities and the County to ameliorate differences between major development standards that potentially affect or hinder island annexation efforts. The County should consider efforts to remove incentives for property owners in the unincorporated islands to remain in the County, by making development standards in the unincorporated islands comparable to development standards in the surrounding city.
7. **Status Report to Commission.** LAFCO staff will report to the Commission on the status of each city's island annexation efforts, as necessary.

## CHAPTER 3.7

# AGRICULTURAL LAND PRESERVATION AND MITIGATION POLICIES

Adopted: 04/04/2007

Amended: 12/04/2024

### SECTION 3.7.1 INTRODUCTION

Government Code (GC) §56377 requires LAFCO to discourage premature conversion of agricultural lands, guide development away from existing agricultural lands and promote the development of existing vacant lands within city boundaries prior to conversion of additional agricultural lands.

Consistent with GC §56377 it is LAFCO's goal to avoid or substantially minimize potential impacts to agricultural lands. Mitigation of impacts to agricultural lands cannot be viewed as the equivalent of avoidance of impacts or as an acceptable means of facilitating urban encroachment into agricultural lands where viable alternatives are available that meet the overall objectives of state law and LAFCO's mission.

The hierarchy of agricultural land preservation strategies of 1) avoidance, 2) minimizing, and then 3) mitigating impacts to agricultural lands as a last resort where conversion or other impacts cannot be avoided has been reinforced in CALAFCO's 2018 White Paper "State of the Art on Agricultural Preservation [Feb. 2018] to address the need for more effective preservation strategies, particularly on the urban fringe where agricultural land is most at risk.

Pursuant to its Urban Service Area Policies in Chapter 2, LAFCO will consider whether a city has developed and successfully implemented measures to first avoid and minimize the conversion of agricultural lands or open space prior to bringing forward a proposal that involves conversion of agricultural lands or open space; and whether the proposal contains mitigation for the conversion of any such lands consistent with LAFCO policies.

The purpose of these policies is to provide guidance to property owners, potential applicants and cities on how to address agricultural mitigation for LAFCO proposals and to provide a framework for LAFCO to evaluate and process in a consistent manner, LAFCO proposals that involve or impact agricultural lands.

### SECTION 3.7.2 GENERAL POLICIES

1. LAFCO promotes the agricultural preservation strategies of avoiding and/or minimizing potential impacts to agricultural lands in preference to mitigation, consistent with GC §56377. In reviewing proposals involving potential impacts to agricultural lands, LAFCO will strongly weigh the feasibility of avoiding and minimizing impacts prior to considering the effectiveness and utility of mitigation.
2. Given that agricultural workers are an essential component of Santa Clara County's agricultural industry, Santa Clara LAFCO will give special consideration to proposals that are for agricultural worker housing as referenced in Urban Service Area Policy #3.4.15 and Out of Agency Service by Contract Policy #5.3.3(b).
3. LAFCO recommends provision of agricultural mitigation as specified herein for all LAFCO applications that impact or result in a loss of prime agricultural lands as defined in Policy #7.3.1. Variation from these policies should be accompanied by information explaining the adequacy of the proposed mitigation.
4. LAFCO encourages cities with potential LAFCO applications involving or impacting agricultural lands to adopt citywide agricultural preservation and mitigation policies and programs that are consistent with these policies.
5. When a LAFCO proposal impacts or involves a loss of prime agricultural lands, LAFCO encourages property owners, cities and agricultural conservation agencies to work together as early in the process as possible to initiate and execute agricultural mitigation plans, in a manner that is consistent with these policies.
6. LAFCO will work with agricultural entities, the County, cities and other stakeholders to develop a program and public education materials to improve the community's understanding of the importance of agriculture in creating sustainable communities within Santa Clara County.
7. LAFCO will review and revise these policies as necessary.

### SECTION 3.7.3 DEFINITION OF PRIME AGRICULTURAL LANDS

1. "Prime agricultural land" as defined in GC §56064 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.

#### **SECTION 3.7.4 MITIGATION RECOMMENDATIONS**

1. Proposals involving the conversion of prime agricultural lands should provide one of the following mitigations at a not less than 1:1 ratio (1 acre preserved for every acre converted) along with the payment of funds as determined by the city / agricultural conservation entity (whichever applies) to cover the costs of program administration, land management, monitoring, enforcement and maintenance of agriculture on the mitigation lands:
  - a. The acquisition and transfer of ownership of agricultural land to an agricultural conservation entity for permanent protection of the agricultural land.
  - b. The acquisition and transfer of agricultural conservation easements to an agricultural conservation entity for permanent protection of the agricultural land.
  - c. The payment of in-lieu fees to an agricultural conservation entity that are sufficient to fully fund, with provisions for adjustment of in-lieu fees to reflect potential changes in land values at the time of actual payment, including:

- i. The cost of acquisition of agricultural lands or agricultural conservation easements for permanent protection, and
  - ii. The cost of administering, managing, monitoring and enforcing the agricultural lands or agricultural conservation easements, as well as the costs of maintaining agriculture on the mitigation lands.
2. Agricultural lands or conservation easements acquired and transferred to an agricultural conservation entity should be located in Santa Clara County and be lands deemed acceptable to the city and entity.
  - a. The agricultural mitigation should result in preservation of land that would be:
    - i. Prime agricultural land of substantially similar quality and character as measured by the Average Storie Index rating and the Land Capability Classification rating, and
    - ii. Located within cities' spheres of influence in an area planned / envisioned for agriculture, and
    - iii. That would preferably promote the definition and creation of a permanent urban / agricultural edge.
3. Because urban / non-agricultural uses affect adjacent agricultural practices and introduce development pressures on adjacent agricultural lands, LAFCO encourages cities with LAFCO proposals impacting agricultural lands to adopt measures to protect adjoining agricultural lands, to prevent their premature conversion to other uses, and to minimize potential conflicts between the proposed urban development and adjacent agricultural uses. Examples of such measures include, but are not limited to:
  - a. Establishment of an agricultural buffer on the land proposed for development. The buffer's size, location and allowed uses must be sufficient to minimize conflicts between the adjacent urban and agricultural uses.
  - b. Adoption of protections such as a Right to Farm Ordinance, to ensure that the new urban residents shall recognize the rights of adjacent property owners conducting agricultural operations and practices in compliance with established standards.
  - c. Development of programs to promote the continued viability of surrounding agricultural land.

### **SECTION 3.7.5 AGRICULTURAL CONSERVATION ENTITY QUALIFICATIONS**

1. The agricultural conservation entity should be a city or a public or non-profit agency. LAFCO encourages consideration of agricultural conservation entities that:
  - a. Are committed to preserving local agriculture and have a clear mission along with strategic goals or programs for promoting agriculture in the areas that would be preserved through mitigation,
  - b. Have the legal and technical ability to hold and administer agricultural lands and agricultural conservation easements and in-lieu fees for the purposes of conserving and maintaining lands in agricultural production and preferably have an established record for doing so, and
  - c. Have adopted written standards, policies and practices (such as the Land Trust Alliance’s “Standards and Practices”) for holding and administering agricultural lands, agricultural conservation easements and in-lieu fees and are operating in compliance with those standards.

### **SECTION 3.7.6 TIMING AND FULFILMENT OF MITIGATION**

1. LAFCO prefers that agricultural mitigation be in place at the time of LAFCO approval or as soon as possible after LAFCO approval. The mitigation (as detailed in the Plan for Mitigation) should be fulfilled no later than at the time of city’s approval of the final map, or issuance of a grading permit or building permit, whichever occurs first.
2. Cities should provide LAFCO with information on how the city will ensure that the agricultural mitigation is provided at the appropriate time.
3. Cities should provide LAFCO with a report on the status of agricultural mitigation fulfillment every year following LAFCO approval of the proposal until the agricultural mitigation commitments are fulfilled.
4. The agricultural conservation entity should report annually to LAFCO on the use of the in-lieu fees until the fees have been fully expended.

### **SECTION 3.7.7 PLAN FOR MITIGATION**

1. A plan for agricultural mitigation that is consistent with these policies should be submitted at the time that a proposal impacting agricultural lands is filed with LAFCO. The plan for mitigation should include all of the following:
  - a. An agreement between the property owner, city and agricultural conservation entity (if such an entity is involved) that commits the

property owner(s) to provide the mitigation for the loss of prime agricultural lands and establishes the specifics of the mitigation. Upon LAFCO approval of the proposal, the agreement should be recorded with the County Recorder's office against the property to be developed. The agreement should specify:

- i. The type of mitigation that will be provided in order to mitigate for conversion of agricultural lands. (purchase of fee title or easement or payment of in-lieu fees)
- ii. The agricultural conservation entity that will be involved in holding the lands, easements, or in-lieu fees
- iii. The acreage that would be preserved through mitigation and/or the amount of in-lieu fees that would be paid (with provisions to adjust fees to reflect land values at time of payment) along with the methodology adopted by the entity for calculating the in-lieu fees.
- iv. The location of the mitigation lands, when possible.
- v. Information on the specific measures adopted by the city as encouraged in Policy #10 (mitigation for impacts to adjacent agricultural lands)
- vi. The timeframe within which the mitigation will be fulfilled, which should be no later than at the time of city's approval of the final map, or issuance of the grading permit or building permit, whichever occurs first
- vii. The mitigation agreement is to be contingent on LAFCO approval of the proposal.

2. Applicant should provide all other supporting documents and information to demonstrate compliance with these policies.

## CHAPTER 3.8

# URBAN GROWTH BOUNDARIES POLICIES

Adopted: 04/12/1999

Amended: 12/04/2024

### SECTION 3.8.1 INTRODUCTION

Urban Growth Boundaries (UGBs) are planning boundaries adopted to establish very long term or permanent limits on potential urban expansion. UGBs have a similar overall purpose as Urban Service Areas (USAs) in that they include lands intended for urban development and protect surrounding natural resource lands. In some cases, an UGB may be adopted solely by act of the legislative body such as a city council or by means of a voter initiative, and in some cases, by a combination of the two. UGBs are not adopted or regulated by LAFCO. UGBs are intended to be amended very infrequently, within the context of a comprehensive general plan update, or by vote of the public, if adopted in that manner.

UGBs have been adopted by some of the cities of Santa Clara County, in conjunction with the County or unilaterally. Some UGBs are essentially coterminous with existing city USAs, while others may include some additional lands deemed appropriate for future consideration of urban growth. Inclusion of additional lands outside a city's USA within an UGB is not meant to convey that such lands are necessarily to be urbanized within a particular time frame, only that such lands may be considered for a city's long-term growth needs if approved for inclusion in a city's USA by LAFCO, in accordance with established LAFCO policy.

UGBs could reduce speculation about the direction and extent of potential urban expansion, helping to promote certainty, urban infill, more stable growth expectations and land use patterns, and better preservation of agricultural and other natural resource lands. Cities such as San Jose and Milpitas, were early adopters of UGBs. Both cities adopted UGBs with a reduced urban footprint and requested corresponding USA retraction to prevent sprawl and curb hillside urban development, promote viewshed preservation, and conserve valley agricultural lands.

### **SECTION 3.8.2 POLICIES**

1. LAFCO supports adoption of UGBs that are consistent with LAFCO's goals to prevent sprawl, protect open space and agricultural lands and promote efficient delivery of services. However, an USA remains the definitive, Santa Clara LAFCO-adopted planning boundary indicating whether an area will be potentially annexed and provided with urban services.
2. LAFCO shall recognize any urban growth boundary, urban limit line, "greenline," greenbelt boundary, or other boundary adopted by a city and/or approved by voter initiative that defines the limits of a city's urban development on a long term or permanent basis.
3. LAFCO shall consider these boundaries when reviewing relevant proposals, including annexations or reorganizations over which LAFCO retains review and approval authority, urban service area amendment proposals, sphere of influence amendment proposals, and "out-of-agency service by contract" proposals.
4. LAFCO shall discourage proposals which are inconsistent with an adopted urban growth boundary.

## CHAPTER 3.9 INCORPORATION POLICIES

Adopted: 05/30/2007

Amended: 08/01/2007, 12/03/2025

### SECTION 3.9.1 INTRODUCTION

State law (Government Code §56043) defines an “incorporation” as the creation or establishment of a city. Any area proposed for incorporation as a new city shall have at least 500 registered voters residing within the affected area at the time incorporation proceedings are initiated with Santa Clara LAFCO (GC §56043). Pursuant to GC §56023, a “city” means any incorporated chartered or general law city, including any city the name of which includes the word “town.”

The procedure for creating a new “city” in the State of California is a lengthy and very complex process requiring at least a year of formal review and significant requisite fees. 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 must also be environmentally and logically sound from a public service standpoint.

These policies augment the Governor’s Office of Planning and Research (OPR) 2003 “Guide to the LAFCO Process for Incorporations”. Where these local policies differ from the OPR Guidelines, the local policies shall apply. These policies are not intended to preempt State law. Should these policies conflict with the provisions of law, the provisions of the CKH Act and related statutes shall prevail. Unless otherwise specified herein, proposals for incorporation are subject to all policies and requirements that apply to proposals and applications submitted to Santa Clara LAFCO.

### SECTION 3.9.2 CERTIFICATE OF FILING AND TIME LIMITATIONS

1. In order to deem the incorporation application filed, issue the Certificate of Filing and set a hearing date for the proposal, all application requirements must be completed (GC §56651). The Certificate of Filing will not be issued by the Executive Officer until all of the filing requirements have been met including the comprehensive fiscal analysis, plan for services, and information sufficient to facilitate an environmental determination pursuant to CEQA.
2. To ensure that the petition signatures remain sufficient and that the proposal remains current, the application requirements must be completed within 24 months following the date of the Certificate of Sufficiency or the date of adoption of the resolution making the application.

3. If the application remains incomplete after 22 months, Santa Clara LAFCO staff will notify the proponents at least 60 days before the 24-month deadline. The Commission may allow an extension of the 24-month time period, on a case by case basis.
4. Santa Clara LAFCO staff will use its best efforts to ensure timely completion of each procedural requirement in the incorporation process, including, but not limited to, preparing requests for financial information as early as possible following the close of the fiscal year; giving appropriate notice; initiating agency consultations; and convening meetings related to revenue transfers.

### **SECTION 3.9.3 INCORPORATION PROCESSING FEES**

1. The actual costs for processing the incorporation application are the proponent's responsibility. Application costs include consultant costs for preparing the comprehensive fiscal analysis and the environmental review documents, Santa Clara LAFCO staff time, legal counsel costs and other related expenses incurred by Santa Clara LAFCO in the incorporation proceedings.
2. Incorporation proposals are charged on an actual cost basis with a deposit required when the proposal is initiated. The cost of the proceedings will be much higher than the initial deposit. The deposit allows staff to open a file and initiate the determination of petition sufficiency and begin meetings with the proponents to develop a timeframe and cost estimates.
3. Consultants will be hired by Santa Clara LAFCO for the preparation of the comprehensive fiscal analysis and CEQA analysis / documents. Each consultant's total cost will be divided into costs for each sub task. Prior to commencement of each sub task, the proponents must make a deposit in the amount of the estimated cost for that task. Santa Clara LAFCO will not authorize the consultant to commence work on the task until the requested funds are received. At the end of each task a final accounting will be done. Any amounts due must be paid within 30 days.  
Any refunds will be applied to the subsequent task or refunded. The actual amounts of the deposits will be determined after the consultant contracts are negotiated.
4. Santa Clara LAFCO staff will provide the proponents an initial estimate of the costs of the incorporation proceedings. The terms of payment will be stated in an agreement to be executed between Santa Clara LAFCO and the proponents.

#### **SECTION 3.9.4 INCORPORATION BOUNDARIES**

1. The Commission will review proposal boundaries, as submitted by proponents. Alternatives to the proposal must also be considered by Santa Clara LAFCO. The LAFCO Executive Officer will convene a meeting to identify logical boundary alternatives for the new city at the earliest date possible. The meeting will include the proponents. The factors contained in GC §56668, and the following factors, will be considered in reviewing proposal boundaries.
2. The Commission may modify proposed boundaries and order the inclusion or deletion of territory to accomplish its goal of creating orderly boundaries.
3. A proposed incorporation must satisfy a demonstrated need for services, and promote the health, safety, and welfare of the community, and environmental justice.
4. A proposed incorporation or formation must not conflict with the normal and logical expansion of adjacent governmental agencies.
5. An area proposed for incorporation must be compact and contiguous, and possess a community identity.
6. Pursuant to GC §56744, the proposal boundaries and alternatives shall not create islands or areas that would be difficult to serve.
7. Areas included within the proposed incorporation boundaries should consist of existing developed areas and lands, which are planned for development.
8. Inclusion of agricultural and open space lands, and lands under a farmland security zone (GC §56749), within the boundaries of a proposed city is discouraged.
9. Incorporation boundaries should be drawn so that community based special districts are wholly included within or excluded from the incorporation area, unless the Commission determines that there is either an overriding benefit to dividing the district or that there is no negative impact from dividing the district.

#### **SECTION 3.9.5 SERVICES TO INCORPORATION AREA**

1. Applicants must demonstrate to Santa Clara LAFCO that the proposed city will have the ability and sufficient revenues to provide adequate facilities and services in the incorporation area pursuant to GC §56668(k), and at no less than the level of services provided in the area prior to incorporation.

2. New cities should assume jurisdiction over as many services in the incorporation area as are feasible.

#### **SECTION 3.9.6 SPECIAL DISTRICTS AFFECTED BY INCORPORATION PROPOSAL**

1. District territory included in an incorporation area should be detached from the district or the district dissolved unless Santa Clara LAFCO determines that there is an overriding reason to retain the district.
2. Detachment of territory from a region-wide special district which provides service to multiple communities outside the incorporation area is discouraged, unless the Commission determines that there is an overriding reason for the detachment.

#### **SECTION 3.9.7 TIMING AND INITIATION OF NEW CITY'S SPHERE OF INFLUENCE (SOI)**

1. Pursuant to §56426.5, the Commission may determine the SOI for the new city at the time the incorporation is approved or no later than one year from the effective date of incorporation. The new city may initiate a SOI application. In the absence of an application within the time frame necessary for sphere adoption, the Commission will adopt an initial SOI boundary for the city which will be coterminous with the city's boundaries.

#### **SECTION 3.9.8 ENVIRONMENTAL REVIEW OF INCORPORATION PROPOSALS - CEQA**

1. An incorporation is considered a project under the California Environmental Quality Act (CEQA). Pursuant to CEQA, Santa Clara LAFCO is the Lead Agency for an incorporation proposal it receives that is initiated by petition and LAFCO shall be responsible for the environmental review process. When an incorporation proposal is not initiated by petition, Lead Agency status is determined pursuant to the State CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15000 et seq.
2. A project description will be prepared that includes the proposal as submitted for the purpose of preparing an environmental document. The project description may identify alternatives being considered for the project and a sphere of influence boundary for the proposed city.
3. When LAFCO is the Lead Agency under the direction and management of the LAFCO Executive Officer, an environmental review of the proposed incorporation will be initiated as early as feasible and will be completed as cost-effectively as possible.

### **SECTION 3.9.9 COMPREHENSIVE FISCAL ANALYSIS AND REVENUE NEUTRALITY NEGOTIATION PROCESS**

Pursuant to GC §56800, the Executive Officer shall prepare, or caused to be prepared by contract, a Comprehensive Fiscal Analysis (CFA) for an incorporation proposal which shall be included in the Executive Officer Report. Pursuant to GC §56815, 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 (i.e., Revenue Neutrality).

The general process and requirements for preparing the CFA and negotiating the revenue neutrality is outlined in the flow chart presented in Exhibit 3.9-A and described below.

#### **1. Initiate Comprehensive Fiscal Analysis (GC §56800)**

- a. Santa Clara LAFCO will retain a financial consultant qualified to prepare the CFA and related documents necessary for the project, consistent with Santa Clara LAFCO's usual and customary contract procedures.
- b. The fiscal analysis will evaluate the proposal as submitted as well as the identified alternatives.
- c. A detailed timeline for the CFA process will be developed by Santa Clara LAFCO in consultation with the consultants hired to prepare the CFA.
- d. The Draft CFA will be prepared as early as possible to support revenue neutrality discussions.

#### **2. Revenue Neutrality Negotiations**

- a. The LAFCO Executive Officer at their discretion may convene a series of meetings with representatives of the County and representatives of the incorporation proponents, and other affected agencies and LAFCO consultants as needed, to develop a revenue neutrality agreement as soon as possible after the draft CFA information becomes available. The LAFCO Executive Officer may request the County and the incorporation proponents to provide a list of its representatives and designate one principal representative each, and additional members may be added after negotiations commence with the agreement of both parties.

**3. Timing and Adoption of Revenue Neutrality Agreement**

- a. The Draft CFA is a prerequisite to revenue neutrality negotiations.
- b. The County and the incorporation proponents will have up to 90 days to negotiate a revenue neutrality agreement. The 90 days commences from their first meeting following the release of the Draft CFA.
- c. Within the 90-day period, if the parties reach agreement, they shall provide a written revenue neutrality agreement to the LAFCO Executive Officer; the agreement will be signed by proponents. County representatives will place the agreement on the County Board of Supervisors agenda within the 90-day period.
- d. The terms of the Revenue Neutrality Agreement will be included in the budget projections and feasibility analysis in the Public Hearing Draft CFA.
- e. If agreement does not occur within the 90-day negotiating period, LAFCO staff will draft proposed terms and conditions for use in the Public Hearing Draft CFA and for recommendation to the Commission at its public hearing.
- f. The County and the incorporation proponents may jointly reduce the time period for reaching agreement.

**4. Public Hearing Draft CFA and LAFCO Public Hearing**

- a. A Notice of Availability will be prepared by Santa Clara LAFCO staff and the Public Hearing Draft CFA will be circulated and made available to the public no less than 30 days prior to LAFCO's public hearing on the incorporation proposal. The Public Hearing Draft CFA includes terms of the revenue neutrality agreement if agreement has been reached, or terms to be determined by Santa Clara LAFCO if agreement has not been reached.

**5. State Controller Review of Comprehensive Fiscal Analysis, if Requested (GC §56801)**

- a. Any party may request review of the Public Hearing Draft Comprehensive Fiscal Analysis within 30 days of the release of the Notice of Availability of the Public Hearing Draft CFA. The written request shall be made to the LAFCO Executive Officer and should identify the specific elements that the State Controller is being requested to review and state the reasons for review of each of the elements.
- b. The requestor is responsible for all costs related to the request, and shall sign an agreement to pay such costs.

- c. The requestor shall deposit a fee in the amount of the total estimated cost of the review at the time the request for review is filed. The deposit will include the estimated charge by the State Controller, LAFCO staff costs, and costs for any consultants required to assist the State Controller with the review. The deposit shall be supplemented by the requestor if additional funds are needed to complete the review. The difference between the actual cost and the estimate shall be refunded / charged to the party initiating the request after the review is complete.

**6. Final CFA**

- a. The Final CFA will include the terms and conditions approved by Santa Clara LAFCO and will be prepared following the Commission's determinations and approval of the incorporation.

**SECTION 3.9.10 FINANCIAL ASSUMPTIONS AND FISCAL ANALYSIS REQUIREMENTS**

1. All assumptions and calculation methodologies used for the fiscal calculations shall be clearly identified and detailed in the CFA. (GC §56800)
2. The CFA shall calculate the proposed city base year costs consistent with the 2003 OPR Guidelines.
3. The base year or “prior fiscal year” shall be the basis of financial calculations and determinations, as defined in G C §56810(g) as follows: “the most recent fiscal year for which data on actual direct and indirect costs and revenues needed to perform calculations required by this section are available preceding the issuance of the certificate of filing.”
4. Costs of services in the proposal area shall be based on existing levels of service provided in the proposal area by the County and other agencies during the “base year.”
5. When proposed city functions and services have not previously been provided by an agency prior to incorporation (e.g., new city general administration costs that are not transferred from another agency), the cost projection basis for the proposed city’s future expenditures for those services and functions shall be based on cities with similar population and geographic size that provide similar level and range of services.
6. Revenue projections for anticipated future city revenues will be “conservative”; where the revenue projection is estimated as a range, the lowest number in the range will be used for calculating future city budgets.

7. Property tax projection calculations for projecting the future city revenues will include the rate of increase in the assessed value (not greater than 2% annually). Property tax revenue projections based on market driven property tax reassessments (e.g., increases in home re-sale values) should not be relied upon for calculating future year city budgets and determining feasibility.
8. The CFA shall include the proposed city budget, projected for a minimum of ten years in order to 1) evaluate long-term feasibility, 2) consider the effects of the new city's repayment to the County for its first-year services and 3) project the effects of foreseeable shifts in state subventions, etc.
9. The CFA should include an annual appropriation in the new city budget for contingencies of 10% in each budget year evaluated. The CFA should include an additional reserve of 10% in any given year in the new city's budget projection.
10. The CFA will calculate the estimated property tax transfer and the total net agencies' cost of providing service in the proposed incorporation area. The Commission makes the final determination of costs and the transfer of property taxes.
11. Financial feasibility shall be based on the ability of the new city to maintain pre-incorporation service levels.
12. The CFA will include revenue sources that are currently available to all general law cities. Projections will not be based on potential revenue sources not currently applicable in the area or new revenues which might become available through the discretionary actions of a future city council.

#### **SECTION 3.9.11 BASIS AND ASSUMPTIONS FOR REVENUE NEUTRALITY**

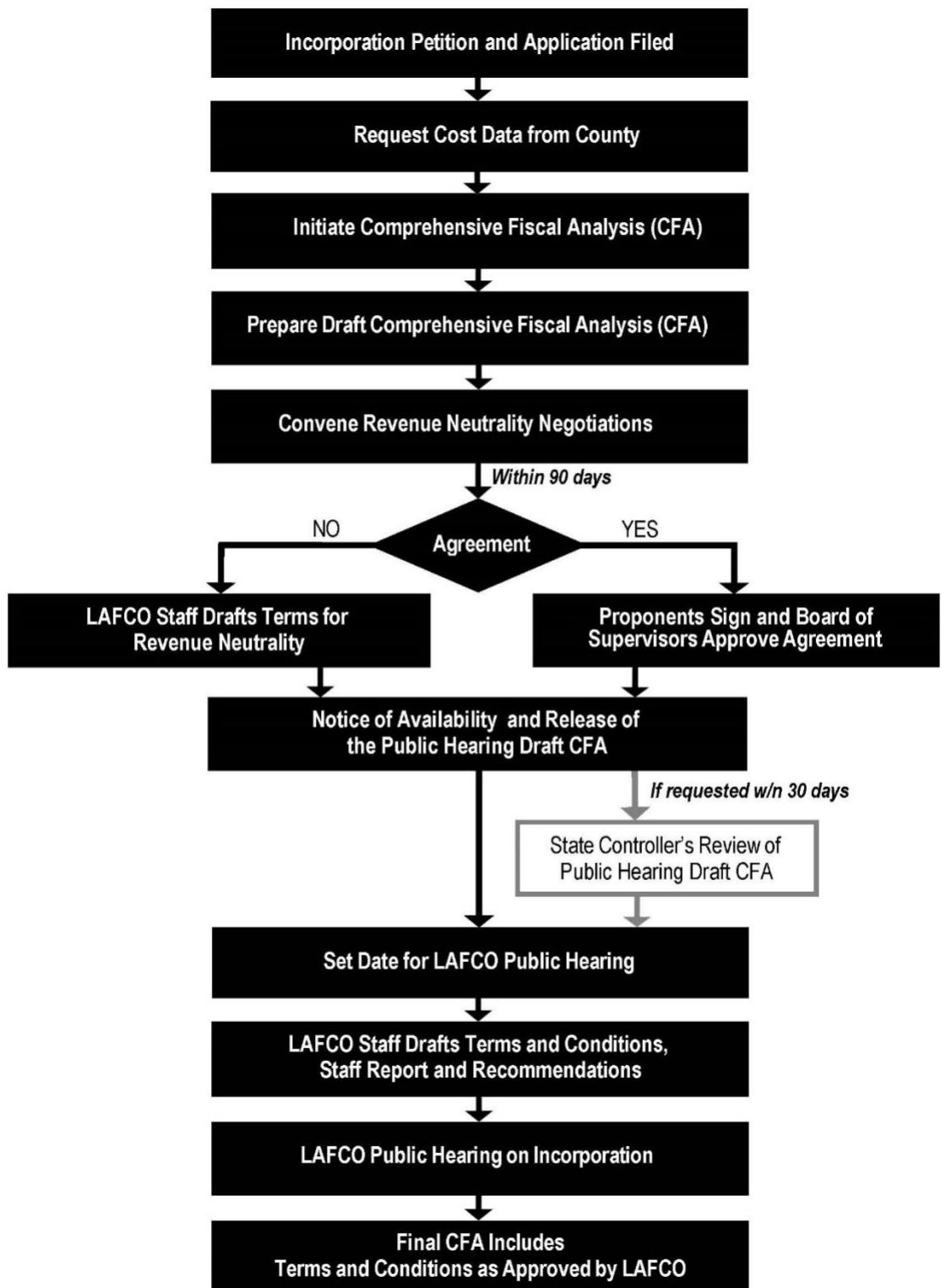
Revenue neutrality intends that any proposal that includes an incorporation should result in a similar exchange of both revenue and responsibility for service delivery among the county, the proposed city, and other subject agencies. It is the further intent of the Legislature that an incorporation should not occur primarily for financial reasons (GC §56815). Pursuant to GC §56815, Santa Clara LAFCO will make findings and/or impose conditions or mitigations to equalize the transfers of revenue and service.

1. The revenue neutrality agreement or any proposal for LAFCO terms and conditions for revenue neutrality shall include:
  - a. A criteria and a process for modification by the affected agency and the city after incorporation
  - b. A description of methodologies and assumptions leading up to the terms of the agreement

- c. Identifiable and recurring revenues and expenditures only
2. The revenue neutrality agreement or any proposal for LAFCO terms and conditions for revenue neutrality shall exclude:
  - a. Anticipated or projected revenue growth or sources of revenue dependent on discretionary actions by a future city council
  - b. Services funded on a cost recovery basis (such as permits / building inspection) which are, by definition, revenue neutral
  - c. Costs of capital improvements
3. The following additional policies apply to the revenue neutrality agreement or any proposal for Santa Clara LAFCO terms and conditions for revenue neutrality:
  - a. Fiscal impacts to restricted and unrestricted revenues should be evaluated separately. A city may pay a portion of its annual revenue neutrality payment with restricted funds if both agencies agree, and if a legal exchange mechanism can be created to do so.
  - b. Fees charged by the county for services to other jurisdictions (such as property tax administration fees or jail booking fees) should be included as an off-setting county revenue in the calculation of fiscal effects on the county.
  - c. Countywide costs of regional services and general government, including the County Administration, Clerk of the Board, Auditor-Controller and other administrative government functions which are required to support county governance of both incorporated and unincorporated areas should not be included in defining services or revenues transferred to the new city.

#### **SECTION 3.9.12 EFFECTIVE DATE OF INCORPORATION**

1. The effective date of incorporation should be considered in revenue neutrality negotiations. Santa Clara LAFCO will establish the effective date. The effective date should be set to allow adequate initial account balances for the new city as it assumes service responsibilities, but should not otherwise conflict with the intent of fiscal neutrality or exacerbate County revenue losses.

**EXHIBIT 3.9-A: COMPREHENSIVE FISCAL ANALYSIS AND REVENUE NEUTRALITY NEGOTIATION PROCESS**


## CHAPTER 3.10 SERVICE REVIEW POLICIES

Adopted: 12/11/2002

Amended: 10/14/2009, 08/06/2025

### SECTION 3.10.1 INTRODUCTION

Pursuant to Government Code (GC) §56430, LAFCO is required to conduct service reviews and prepare the requisite written statement of its determinations prior to establishing or updating city and special district spheres of influence.

The mandate for LAFCOs to conduct services reviews was enacted as part of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 and is based on the recommendation contained in [Growth Within Bounds](#) – a Report of the Commission on Local Governance for the 21<sup>st</sup> Century. The Report noted that for LAFCOs to achieve their fundamental purposes they must have a comprehensive knowledge of the services available within the county, the current efficiency of providing service within various areas of the county, future needs for each service, and expansion capacity of each service provider. The Report identified service reviews as an opportunity for LAFCOs to gain that knowledge and promote efficient service delivery to meet future growth and development needs in the county.

In Santa Clara County, service reviews are intended to serve as a tool to help LAFCO, the public and other agencies better understand public service governance and delivery and evaluate options for the provision of efficient and effective public services.

These policies will provide guidance to LAFCO in the preparation and implementation of service reviews.

### SECTION 3.10.2 SERVICE REVIEW DEFINED

A service review is a comprehensive review of services within a designated geographic area and includes steps to:

- Obtain information about services in the geographic area,
- Evaluate the provision of services from a comprehensive perspective, and
- Recommend actions when necessary, to promote the efficient provision of those services.

LAFCO is not required to initiate boundary changes based on service reviews. However, LAFCO, local agencies or the public may subsequently use the service reviews to pursue changes in jurisdictional boundaries or spheres of influence.

#### **SECTION 3.10.3 SERVICES TO BE REVIEWED**

GC §56074 defines a “service” as a specific governmental activity established within, and as part of, a function of a local agency.

Service reviews will cover the range of services that a public agency provides or is authorized to provide (examples include fire, water, sewer, lighting, library, police, storm water and solid waste collection / disposal, gas and electricity). General government services such as social and health services, courts and criminal justice will be excluded from the reviews. Service reviews are triggered by requirements to create or update the Sphere of Influence (SOI) for public agencies. Therefore, Santa Clara LAFCO will review services that are provided by public agencies that have, or are required to have, SOIs. In doing so, Santa Clara LAFCO will also take into consideration other services (e.g., emergency response along with fire protection services) and the operation of other providers that service the same region (e.g., private water providers or volunteer fire crews).

#### **SECTION 3.10.4 GEOGRAPHIC SCOPE OF A SERVICE REVIEW**

LAFCO will determine how service reviews will be organized and conducted in Santa Clara County. Consistent with GC §56430 (a), LAFCO may conduct a service review for sub-regional areas within the county or on a countywide basis, it may review a single agency or multiple agencies, and it may review a single service or multiple services.

Generally, Santa Clara LAFCO will include in a service review the geographic area and agency(ies) that best facilitate a logical, comprehensive and adequate review of services in the area. LAFCO may need to include a service provider in more than one service review area, only review services of some providers to the extent that they affect the service review area and services under study, or only review a portion of services provided. Service reviews may extend beyond the county boundary in some cases, to provide a more useful and accurate analysis of service provision, especially where multi-county service providers are involved.

#### **SECTION 3.10.5 SERVICE PROVIDERS TO BE INCLUDED**

Consistent with GC §56430(b), LAFCO shall comprehensively review all the agencies that provide the identified service or services within the designated geographic area. Agencies that are required to have SOIs will be the focus of service reviews. These

agencies include the 15 cities, and the special districts under LAFCO jurisdiction, such as, but not limited to, county service areas, community service districts, fire protection districts, sanitary / sanitation districts, water districts, vector control districts, health care districts, open space districts and resource conservation districts.

Agencies that do not have SOIs include school districts, private providers, state or federal agencies and other agencies such as Joint Powers Authorities, that provide support or overlapping services in the region. These agencies will also be reviewed to the extent necessary to establish relationships, quantify services, designate or map service locations / facilities and provide a complete overview of services in the area. These agencies may be requested to participate and provide information necessary to conduct the review. Pursuant to GC §56430(d), LAFCO may request information from entities that provide wholesale or retail supply of drinking water, including mutual water companies.

#### **SECTION 3.10.6 TIMING OF SERVICE REVIEWS**

1. Consistent with GC §56430(e), LAFCO will prepare a service review as necessary, prior to or in conjunction with the establishment or update of the SOI. Minor amendments of a SOI, as determined by Santa Clara LAFCO, may not require a new service review.
2. Service reviews may need to be conducted independent of SOI reviews and updates, to facilitate review of a pending application or other LAFCO action, unless Santa Clara LAFCO determines that prior service reviews are adequate for the purpose.

#### **SECTION 3.10.7 SERVICE REVIEW FUNDING**

1. Santa Clara LAFCO will include the funding for LAFCO-initiated service reviews in its annual work plan and budget development process. Sufficient funds necessary to satisfactorily complete the required reviews including consultant costs will be allocated in the Santa Clara LAFCO budget for each fiscal year service reviews are to be conducted.
2. An application-processing fee for conducting the service reviews will be charged when LAFCO applications (such as, but not limited to sphere of influence amendments, urban service area amendments or annexation applications) trigger the service review requirement and an applicable service review does not exist.

**SECTION 3.10.8 SERVICE REVIEW PROCESS**

1. The Commission will develop a multi-year workplan, including schedule, priority, and general scope for each round of service reviews.
2. Prior to the start of each service review, the Commission will determine a work plan including the timeline, the services and service providers that will be covered, the geographic scope of the review, and an initial list of emerging / focus issues to be addressed.
3. Service reviews may be conducted by consultants with specialized expertise or by Santa Clara LAFCO staff, depending on the complexity of the study, the presence of any controversial issues, and the availability of staff resources.
4. The key steps in conducting a service review are outlined as follows:
  - a. **Technical Advisory Committee (TAC):** As appropriate, form a TAC for a specific service review composed of representatives of stakeholder agencies and interested commissioners to provide guidance and serve as a liaison between Santa Clara LAFCO and the affected agencies.
  - b. **Initial Stakeholder / Public Outreach and Engagement:** To promote early stakeholder and public engagement in service reviews, Santa Clara LAFCO shall:
    - i. Identity stakeholders, including affected local agencies, service providers, community organizations, other interested parties, at the outset of the service review process
    - ii. Create a dedicated webpage for each service review to provide key information, timelines, and regular progress updates, helping to keep stakeholders and the public informed and engaged throughout the review process
    - iii. Raise awareness of the start of each service review through a combination of emails, newsletters, and social media
    - iv. Provide opportunities for early stakeholder and public input through at least one of the following mechanisms: kickoff meetings, community meetings, stakeholder listening sessions, or online surveys
  - c. **Evaluation Criteria:** Where appropriate, establish specific evaluation criteria to be used in making the required service review determinations
  - d. **Data Collection:** Collect and compile necessary data from available data resources (i.e., agency websites, and other relevant sources). Create a

custom questionnaire for each agency to collect any other necessary data and distribute the questionnaire to each agency for their completion.

- e. **Agency Interviews:** Conduct interviews with affected agencies as necessary to follow up on information gaps and seek clarification on matters
- f. **Agency Profiles:** Compile profiles of each of the agencies using a standard format, based on the interviews and data collected and obtain a level of consistency in the data
- g. **Agency Review for Accuracy:** Provide each agency with their agency profile for their internal review and comment, to ensure accuracy prior to analysis
- h. **Data Analysis and Preliminary Findings:** Analyze the data to make the required determinations for each agency and to develop any recommendations
- i. **Administrative Draft Report:** Prepare an administrative draft report for internal LAFCO staff review and comment before public release
- j. **Public Review Draft:** Prepare and release a draft report for 21-day public review and comment period
- k. **Stakeholder / Public Outreach and Engagement on Public Review Draft:** To promote stakeholder / public review of the draft service review report, Santa Clara LAFCO shall:
  - i. Conduct public outreach to the various stakeholders and the public to notify them of the availability of the draft report and to obtain their feedback on the draft report using a combination of mechanisms: updates to the project webpage, project newsletters, emails, social media, and press releases
  - ii. Provide opportunities for various stakeholders and the public to comment on the draft service review through the following mechanisms: community workshops, written comment periods, and public hearings
- l. **LAFCO Public Hearing:** Hold a LAFCO public hearing for the Commission to accept comments on the draft report
  - i. A draft report may be considered final if no substantive comments are received prior to the end of the hearing and the Commission determines it satisfactory

- m. **Revised Draft:** Prepare and release for public review a revised redlined draft document, as necessary, in response to the comments received
- n. **Second LAFCO Public Hearing:**
  - i. Hold a LAFCO public hearing for the Commission to consider and adopt the final report
- o. **Final Report**
  - i. Publish the adopted report on the Santa Clara LAFCO website and notify all stakeholders and interested parties of the availability of the Final Service Review Report

#### **SECTION 3.10.9 IMPLEMENTATION OF SERVICE REVIEW RECOMMENDATIONS**

- 1. Santa Clara LAFCO will encourage and monitor the implementation of service review recommendations.
- 2. Santa Clara LAFCO staff will compile recommendations from the service review report and send a letter to affected agencies requesting a written response on:
  - a. How the affected agency plans to implement the recommendation(s)
  - b. What is the affected agency's timeline for implementation of the recommendation(s)
  - c. Explanation if the affected agency does not plan to implement the recommendation(s)Staff will report to the Commission on the agencies' plans and progress in implementing service review recommendations.
- 3. The Commission will consider affected agencies responses, consider next steps, and determine if further action is needed.

#### **SECTION 3.10.10 APPLICABILITY OF CEQA TO SERVICE REVIEWS**

- 1. LAFCO will consider and adopt service reviews in a manner consistent with the requirements of CEQA.

### **SECTION 3.10.11 EVALUATION CATEGORIES FOR SERVICE REVIEW DETERMINATIONS**

GC §56430(a) requires LAFCO to conduct service reviews and prepare a written statement of determinations on a set of evaluation categories. The following is a general description of the required evaluation categories:

**1. Growth and population projections for the affected area.**

A plan for service provision to an area should take into consideration the existing as well as future need for public services in the area. Service reviews will examine the existing and future need for public services and will evaluate whether projections for future growth and population patterns are integrated into an agency's planning function. This analysis may be used to determine whether the SOI / USA boundaries reflect the expected growth boundaries, if future SOI changes are necessary or feasible, and if agencies are aware of, and planning for anticipated changes in service demand.

In order to examine the existing and future levels of demand for a service, the service review will contain and consider existing and projected population and their relationship to agency plans, planning boundaries and existing and proposed land uses.

**2. The location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence**

GC §56033.50 defines a "disadvantaged unincorporated community" (DUC) as an inhabited territory that constitutes all or a portion of a "disadvantaged community," as defined by Section §79505.5 of the Water Code, i.e., a community with an annual median household income that is less than 80 percent of the statewide annual median household income. GC §56046 defines inhabited territory as territory within which there reside 12 or more registered voters. Through service reviews, Santa Clara LAFCO shall identify the location and service characteristics of a DUC within, or contiguous to an agency's sphere of influence, if any.

**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 disadvantaged, unincorporated communities within or contiguous to the sphere of influence.**

One of LAFCO's goals is to encourage the efficient provision of public services. Any area needing or planned for services must have the infrastructure necessary to support the provision of those services. Infrastructure needs and

deficiencies refers to the adequacy of existing and planned infrastructure and its relationship to the level of service that is being provided or needs to be provided in an area. Infrastructure can be evaluated in terms of capacity, condition, availability, quality and levels of service and quality of plans and programs.

Through service reviews, Santa Clara LAFCO shall regularly monitor the existence of DUCs in Santa Clara County and the infrastructure needs or deficiencies related to sewers, municipal and industrial water, and structural fire protection in any DUC within or contiguous to the sphere of influence.

**4. Financial ability of agencies to provide services.**

A community's public service needs should be viewed in light of the resources available to fund the services. The service review will assess fiscal viability of the agency to provide services and analyze if agencies are capitalizing on financing opportunities and collaborative strategies to deal with financial constraints. The service review will contain information on current and planned financing mechanisms, funding practices and revenue sources and examine their relationship with service boundaries.

**5. Status of, and opportunities for, shared facilities.**

The service review will identify opportunities for service providers to share facilities with the intent of lowering current and potential infrastructure / capital improvement costs. When applicable, the service review will inventory facilities within the study area to determine if facilities are currently being utilized to capacity and whether efficiencies can be achieved by accommodating the facility needs of adjacent agencies. Options for planning for future shared facilities and services, for eliminating duplicative services, replacing outdated or underutilized equipment / facilities and/or implementing economies of scale may also be considered.

**6. Accountability for community service needs, including governmental structure and operational efficiencies.**

Accountable local government is marked by processes and actions that consist of accessible and accountable elected or appointed decision-making body and agency staff; that encourage public participation and solicit public input in the consideration of work plans, budgets, and programs; and that evaluate the agency's plans and programs and publish results to the public.

The service review will study existing and future public service conditions and evaluate governmental structure alternatives for organizational and operational

efficiencies in order to accommodate orderly growth, prevent urban sprawl, ensure efficient delivery of services and improve accountability or governing practices.

Santa Clara LAFCO may evaluate the advantages and disadvantages of potential government structure options or boundary changes including: amending the SOI, annexations to or detachments from cities or special districts, formation of new special districts, incorporation of cities, dissolutions, mergers, consolidations and other reorganization options found in the CKH Act. While there is no requirement that LAFCO initiate any changes of organization as part of the service review, Santa Clara LAFCO, the public or local agencies may pursue subsequent changes to government structure.

**7. Any other matter related to effective or efficient service delivery, as required by LAFCO policy.**

The Commission may adopt other determinations on a case-by-case basis based on unique local conditions, or changes to regulatory requirements or legislation.

**SECTION 3.10.12 ADOPTION OF SERVICE REVIEW DETERMINATIONS**

Any service review determinations will be adopted by resolution.



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# PART 4. ADMINISTRATIVE POLICIES



## CHAPTER 4.1

# TRAVEL AND EXPENSE REIMBURSEMENT

Adopted in LAFCO Bylaws: 04/02/2014

Amended: 10/01/2025

### SECTION 4.1.1 AUTHORIZED EXPENSES

1. LAFCO funds, equipment, supplies (including letterhead), titles, and staff time must only be used for authorized LAFCO business. In addition to the day to day business activities of LAFCO, expenses incurred in connection with the following types of activities generally constitute authorized expenses.
  - a. Communicating with representatives of local, regional, state and national government on LAFCO business
  - b. Attending educational seminars designed to improve skills and information levels
  - c. Participating in local, regional, state and national organizations whose activities affect LAFCO's interests
  - d. Recognizing service to LAFCO (for example, thanking a longtime employee with a retirement gift or celebration of nominal value and cost)
  - e. Attending LAFCO or CALAFCO events
2. All other expenditures incurred will require prior approval by the Commission.
3. Any questions regarding the propriety of a particular type of expense should be resolved before the expense is incurred.

### SECTION 4.1.2 MEETING PER DIEM / STIPEND

Consistent with LAFCO Resolution # 2006-06, LAFCO commissioners including alternate commissioners will receive a \$100 per diem for attendance at LAFCO meetings. This compensation is in lieu of reimbursement for travel and other expenses incurred in attending the LAFCO meetings.

### SECTION 4.1.3 LAFCO COMMISSIONER ATTENDANCE AT CALAFCO CONFERENCE

Regular LAFCO commissioners will be given first priority for attending the CALAFCO Annual Conference. If regular commissioners are unable to attend, alternates may attend.

#### **SECTION 4.1.4 TRANSPORTATION, LODGING, MEALS, AND OTHER INCIDENTAL / PERSONAL EXPENSES**

1. Reimbursement for authorized transportation, lodging, meals and other incidental expenses shall be provided in conformance with the current County of Santa Clara Travel Policy.
2. Registration and travel arrangements including airline reservations must be coordinated through the LAFCO Office.

#### **SECTION 4.1.5 EXPENSE REPORTING**

Within 30 calendar days of return from a LAFCO business trip or event, travelers must submit their travel documents to the LAFCO Office to be eligible for any reimbursement. Receipts are required for processing reimbursement. LAFCO staff will then complete the necessary forms and submit to the appropriate County department in compliance with the County of Santa Clara Travel Policy.

#### **SECTION 4.1.6 AUDITS OF EXPENSE REPORTS**

All expenses are subject to verification that they comply with this policy.

#### **SECTION 4.1.7 REPORT TO LAFCO**

At the following LAFCO meeting, a report shall be presented on meetings attended at LAFCO expense.

#### **SECTION 4.1.8 COMPLIANCE WITH LAWS**

Some expenditures may be subject to reporting under the Political Reform Act and other laws. LAFCO expenditures, expense report forms and supporting documentation are public records subject to disclosure under the Public Records Act.

#### **SECTION 4.1.9 ETHICS TRAINING**

LAFCO is not a local agency whose officials are required to comply with the requirement of ethics training pursuant to GC §53235. Since LAFCO provides reimbursement for expenses, LAFCO commissioners, Executive Officer and Analysts are encouraged to receive ethics training. LAFCO commissioners who are County supervisors, city council members or special districts board members will receive this training in their respective roles as county, city or special district officials. LAFCO staff will advise the public members of opportunities to receive the training.

## CHAPTER 4.2

### RECORDS RETENTION POLICY AND SCHEDULE

Adopted: 10/14/2009

Amended: 08/06/2025

#### SECTION 4.2.1 INTRODUCTION

1. Records must be kept indefinitely in original, photographic, or electronic form pursuant to GC §56382.
2. The Commission authorizes the destruction of original records more than two years old, if a photographic or electronic copy of the original record is made and preserved in compliance with GC §56382, which shall be considered permanently retained pursuant to the Records Retention Schedule. Documents that are not herein defined as “records” are not “records” pursuant to GC §56382 and will be retained and disposed of according to the Records Retention Schedule in *Exhibit 4.2-A*.
3. For purposes of compliance with GC §56382 and implementation of the Commission’s Records Retention Schedule as set forth in *Exhibit 4.2-A*, “records” include the following:
  - Santa Clara LAFCO Meeting Minutes
  - Santa Clara LAFCO Resolutions
  - Documents related to Santa Clara LAFCO proposals such as the:
    - Application, petition or other initiating documents
    - Assessor’s Statement of Property Valuation
    - Agreement to Pay / Indemnification
    - Certificate of Completion
    - Certificate of Filing
    - Environmental Review / CEQA documents such as Initial Study, Exemptions, Notices of Completion and Determination, Comments and Response to Comments, Negative Declaration, mitigation monitoring, Statements of Overriding Consideration
    - Map and Legal Description
    - Notices

- Order for Change of Organization
- Staff Reports
- Statement of Boundary Change
- Statement of Tax Rate Area

**EXHIBIT 4.2-A: RECORDS RETENTION SCHEDULE**

TYPE OF RECORD/ DOCUMENT	DESCRIPTION OR EXAMPLE OF RECORD/DOCUMENT	LEGAL AUTHORITY	MINIMUM LEGAL RETENTION PERIOD
<b>ADMINISTRATIVE DOCUMENTS</b>			
<b>Accounts Payable</b>	Invoices and back-up documents, purchase orders, travel expense reimbursements, petty cash, postage, check requests, receipt books, etc.	CCP 337 26 CFR 31.6001-1(e)(2); Sec. of State Guidelines recommendation	Until audited + 4 years
<b>Accounts Receivable</b>	Invoices, checks, reports, investments, receipt books	26 CFR 31.6001-1(e)(2)	Until audited + 4 years
<b>Agreements/ Contract</b>	Original contracts and agreements and back-up materials, including leases, rentals and any amendments	CCP 337 CCP 337.2	4 years after termination/ completion
<b>Annual Reports</b>		GC 34090; CCP 337; CCP 343; Sec. of State Local Gov't. Records Retention Guidelines	Current + 4 years
<b>Audit Reports</b>	Financial services; internal and/or external reports; independent auditor analyses	GC 34090; CCP 337; CCP 343; Sec. of State Local Gov't. Records Retention Guidelines	Current + 4 years

CCP Code of Civil Procedure (CA)

GC Government Code (CA)

CFR Code of Federal Regulations

TYPE OF RECORD / DOCUMENT	DESCRIPTION OR EXAMPLE OF RECORD / DOCUMENT	LEGAL AUTHORITY	MINIMUM LEGAL RETENTION PERIOD
<b>Brochures / Publications</b>			2 years or longer for historical value
<b>Budget, Annual</b>	Adjustments, journal entries, account transfers, budget preparation documents including adopted budgets		Until audited + 2 years
<b>Claims Against the Commission</b>	Paid / denied		Until settled + 2 years
<b>Correspondence (General)</b>	General correspondence, including letters, and various files not otherwise specifically covered by the retention schedule; compliments, complaints and inquiries; transmittal letters; requests for comments and responses	GC 26202	2 years
<b>Economic Interest Statements - Form 700 (copies)</b>	Copies of statements forwarded to Fair Political Practices Commission	GC 81009(f), (g)	4 years (can image after 2 years)
<b>Economic Interest Statements - Form 700 (originals)</b>	Originals of statements of designated employees	GC 81009(c), (g)	7 years (can image after 2 years)
<b>Email</b>	General correspondence	GC 26202	2 years

TYPE OF RECORD / DOCUMENT	DESCRIPTION OR EXAMPLE OF RECORD / DOCUMENT	LEGAL AUTHORITY	MINIMUM LEGAL RETENTION PERIOD
<b>Ethics Training Compliance</b>	Note: records should contain date of training and name of training provider	GC 53235.2	5 years after receipt of training
<b>Forms</b>	Administrative - blank		Until superseded
<b>General Ledgers</b>	All annual financial summaries	CCP 337 Sec. of State Local Gov't. Records Retention Guidelines	Permanent
<b>Gifts / Bequests</b>	Receipts or other documentation		Until completed + 2 years
<b>Grants Federal, State, or other grants</b>	Grants documents and all supporting documents: applications, reports, contracts, project files, proposals, statements, sub-recipient dockets, environmental review, grant documents, inventory, consolidated plan, etc.	24 CFR 570.502 24 CFR 85.42	Until completed + 4 years
<b>Grants – Unsuccessful</b>	Applications not entitled		2 years
<b>Newsletters</b>	May wish to retain permanently for historic reference		2 years
<b>Political Support or Opposition</b>	Related to legislation		2 years

TYPE OF RECORD / DOCUMENT	DESCRIPTION OR EXAMPLE OF RECORD / DOCUMENT	LEGAL AUTHORITY	MINIMUM LEGAL RETENTION PERIOD
<b>Press Releases</b>	Related to Commission actions / activities		2 years
<b>Procedure Manuals</b>	Administrative		Current + 2 years
<b>Public Records Request</b>	Requests from the public to inspect or copy public documents		2 years
<b>Purchasing, Requisitions, Purchase Orders</b>	Original documents	CCP 337	Until audited + 4 years
<b>Recruitments and Selection</b>	Records relating to hiring, promotion, selection for training	29 CFR 1627.3	3 years
<b>Requests for Qualifications (RFQs) and Requests for Proposals (RFPs)</b>	Requests for Qualifications, Requests for Proposals, and related responses	CCP 337	Current + 4 years
<b>RECORDS RELATING TO LAFCO MEETINGS OR APPLICATIONS</b>			
<b>Affidavits of Publication / Posting</b>	Proof of publication of legal notices for public hearings		2 years
<b>Agenda / Agenda Packets</b>	Agendas, agenda packets, staff reports and related attachments, supplemental items and documentation submitted by staff / public in relation to agenda items.		2 years

TYPE OF RECORD / DOCUMENT	DESCRIPTION OR EXAMPLE OF RECORD / DOCUMENT	LEGAL AUTHORITY	MINIMUM LEGAL RETENTION PERIOD
<b>Audio Recording of LAFCO Meetings</b>			30 days after the LAFCO meeting minutes are approved
<b>Elections</b>	Impartial analysis		2 years
<b>Environmental Review (for projects without a LAFCO application)</b>	Correspondence, consultants, issues, comments and responses.		Completion + 2 years
<b>Mailing Lists for Public Hearing Notices</b>	Owners / voter		1 year after filing Notice of Completion or Commission action, whichever is later
<b>Minutes</b>	Meeting minutes		Permanent
<b>Notices / Agenda</b>	Regular and Special meetings		2 years
<b>Policies &amp; Procedures</b>	All policies and procedures adopted by the Commission		Current + 2 years

TYPE OF RECORD / DOCUMENT	DESCRIPTION OR EXAMPLE OF RECORD / DOCUMENT	LEGAL AUTHORITY	MINIMUM LEGAL RETENTION PERIOD
<b>LAFCO Proposals-Annexations, Reorganizations, or other proposals</b>	Application, petition or other initiating documents, Assessor's Statement of Property Valuation, Agreement to Pay / indemnification, Certificate of Completion, Environmental Review / CEQA documents (such as Initial Study, Exemptions, Notices of Completion and Determination, Comments and Response to Comments, Negative Declaration, mitigation monitoring, Statements of Overriding Consideration), Map and Legal Description, Notices, Order for Change of Organization, Staff Reports, Statement of Boundary Change, Statement of Tax Rate Area		Permanent
<b>Resolutions</b>			Permanent
<b>OTHER MISC. RECORDS/DOCUMENTS</b>			
<b>Demographic / Statistical Data</b>			Current + 2 years
<b>Legal Opinions</b>	Confidential - not for public disclosure (attorney-client privilege)		Until superseded + 2 years
<b>Litigation</b>	Case files, including matters in mediation and/or arbitration		Until settled or adjudicated + 2 years and the time for appeal has expired
<b>Reference Files</b>	Reports, procedures, research, pre- application research and correspondence		2 years minimum, recommended longer if useful

## CHAPTER 4.3

### CONFLICT OF INTEREST CODE

The Political Reform Act, California Government Code sections 81000, et seq. (the "Act"), requires each state and local government agency to adopt and promulgate a conflict of interest code. The Fair Political Practices Commission has adopted a regulation (2 California Code of Regulations section 18730), that contains the terms of a standard conflict of interest code, which can be incorporated by reference into an agency's code. After public notice and hearing Regulation 18730 may be amended by the Fair Political Practices Commission to conform to amendments to the Political Reform Act. Therefore, the terms of 2 California Code of Regulations section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This incorporation page, Regulation 18730, and the attached Appendix designating positions and establishing disclosure categories, shall collectively constitute the Conflict of Interest Code (the "Code") of the Local Agency Formation Commission of Santa Clara County ("LAFCO").

All officials and designated positions shall file their statements of economic interests with the LAFCO Clerk, as LAFCO's Filing Official. If a statement is received in signed paper format, the LAFCO Clerk shall make and retain a copy and forward the original of this statement to the filing officer, the County of Santa Clara Clerk of the Board of Supervisors. If a statement is electronically filed using the County of Santa Clara's Form 700 e-filing system, both the LAFCO Clerk and the County of Santa Clara Clerk of the Board of Supervisors will receive access to the e-filed statement simultaneously. The LAFCO Clerk will make all retained statements available for public inspection and reproduction during regular business hours. (GC §81008.)

Amended per County Counsel Notice dated July 18, 2022.

Approved by the County of Santa Clara Board of Supervisors Date: January 10, 2023.

**EXHIBIT 4.3-A: OFFICIALS WHO MANAGE PUBLIC INVESTMENTS**

LAFCO Officials who manage public investments, as defined by 2 California Code of Regulations section 18700.3, are NOT subject to LAFCO's Code, but must file disclosure statements under Government Code section 87200, et seq. (2 California Code Regulations. §18730(b)(3).) These positions are listed here for informational purposes only.

It has been determined that LAFCO currently has no officials who manage public investments.

**DESIGNATED POSITIONS GOVERNED BY THE CONFLICT OF INTEREST CODE**

DESIGNATED POSITIONS' TITLE OR FUNCTION	DISCLOSURE CATEGORY ASSIGNED
<b>Commissioner</b>	1
<b>Alternate Commissioner</b>	1
<b>Executive Officer</b>	1
<b>Assistant Executive Officer / Senior LAFCO Analyst</b>	1
<b>LAFCO Analyst</b>	1
<b>Newly Created Position</b>	*

\*Newly Created Positions

A newly created position that makes or participates in the making of decisions that may foreseeably have a material effect on any financial interest of the position-holder, and which specific position title is not yet listed in an agency's conflict of interest code is included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code, subject to the following limitation: The Executive Officer may determine in writing that a particular newly created position, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the broadest disclosure requirements, but instead must comply with more tailored disclosure requirements specific to that newly created position. Such written determination shall include a description of the newly created position's duties and, based upon that description, a statement of the extent of disclosure requirements. The Executive Officer's determination is a public record and

shall be retained for public inspection in the same manner and location as this conflict-of-interest code. (GC §81008.)

As soon as the Commission has a newly created position that must file statements of economic interests, the Commission shall contact the County of Santa Clara Clerk of the Board of Supervisors Form 700 division to notify it of the new position title to be added in the County's electronic Form 700 record management system, known as eDisclosure. Upon this notification, the Clerk's office shall enter the actual position title of the newly created position into eDisclosure and the Commission shall ensure that the name of any individual(s) holding the newly created position is entered under that position title in eDisclosure.

Additionally, within 90 days of the creation of a newly created position that must file statements of economic interests, the Commission shall update this conflict-of-interest code to add the actual position title in its list of designated positions, and submit the amended conflict of interest code to the County of Santa Clara Office of the County Counsel for code-reviewing body approval by the County Board of Supervisors. (GC §87306.)

**EXHIBIT 4.3-B: DISCLOSURE CATEGORIES**

The disclosure categories listed below identify the types of economic interests that the designated position must disclose for each disclosure category to which he or she is assigned.

**Disclosure Category 1:** (a) All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that are located in, that do business in, or own real property within the jurisdiction of LAFCO; and (b) All interests in real property which is located in whole or in part within, or not more than two miles outside, the jurisdiction of LAFCO, or of any land owned or used by LAFCO.

**Disclosure Category 2:** Individuals serving as a consultant as defined in FPPC Reg 18701 must file under the broadest disclosure set forth in this Code subject to the following limitation:

The Executive Officer may determine that, due to the range of duties or contractual obligations, it is more appropriate to designate a limited disclosure requirement. A clear explanation of the duties and a statement of the extent of the disclosure requirements must be in a written document. The Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.