

**Updated Subsection –  
Project/Application Processing  
of the  
Policy and Procedure Manual  
Dated November 2012**

**Attachment 1**

## **GUIDELINES FOR EVALUATING PROPOSALS**

### **STATEMENT OF PURPOSE:**

Beginning at Section 56000 of the California Government Code, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 requires LAFCO to review and make determinations on all changes of organization and reorganization. Section 56375(g) further requires that LAFCO adopt written procedures for the evaluation of proposals and requires that any policies for this purpose be in writing. Pursuant to this requirement, the following policies, procedures, and standards have been adopted by the San Bernardino LAFCO in order to assist in their evaluation of proposals filed.

These policies are based on existing circumstances unique to the County of San Bernardino and are primarily designed to ensure that local services are provided efficiently and economically and that the provision of the service is sustainable. The following policies have been adopted to direct its staff, communities, agencies, and citizens in the pursuit of jurisdictional change.

### **POLICIES:**

1. **PRIORITIES FOR ANNEXATION AND FORMATION** *(Adopted April 12, 1972; Amended August 27, 1986.)*

The Commission will consider the following priorities or guidelines for annexation and formation with the provision that overriding circumstances must be stated in exceptions:

- a. Annexation to an existing city or district instead of formation of a new agency.
- b. Annexation to a city rather than a district if both can provide comparable services.
- c. Annexation to a multi-purpose district in preference to annexation to a single purpose district.
- d. Formation of a new political entity as the last and least desirable alternative.

2. **PRE-ZONING FOR CITY ANNEXATIONS** (Adopted June 14, 1978; legislatively amended January 1, 2001).

Effective January 1, 2001, pre-zoning is mandated by Government Code Section 56375, which specifies that all pre-zoning designations shall remain in effect for at least two years unless the City Council makes specified findings relating to changed conditions and circumstances. No city annexation application will be deemed complete unless the pre-zoning process has been completed. Exceptions to this requirement include the provision of evidence of vested entitlements for development within the study area or demonstration of buildout of the territory.

The adopted procedure for pre-zoning is as follows: Such pre-zoning shall also require that the city become the lead agency for environmental review for the proposed change and shall prepare and submit to LAFCO the environmental assessment forms in sufficient time for LAFCO's environmental consultant to comment before a determination of environmental effects is made.

3. **CONCURRENT CITY-DISTRICT ANNEXATION** (Adopted April 12, 1972; Amended December 12, 1979, May 16, 1980 and April 16, 1997.)

For any annexation within a community served by a variety of community-based local agencies, the Commission shall require concurrent annexation to all of the local agencies serving the community (concurrent city/district annexations).

4. **SUFFICIENCY OF SIGNATURES ON PETITIONS AND NUMBER OF REGISTERED VOTERS** (Adopted November 9, 1977; Amended June 14, 1978 and April 16, 1997.)

The Commission recognizes that the review and approval process for many proposals may be changed, and the number of registered voters affected:

1. For proposals which require petitions to be circulated, after LAFCO approval, the number of registered voters residing in an area on the date of LAFCO approval is the number of registered voters on which the sufficiency of any petition is based.
2. For proposals in which petitions are circulated prior to LAFCO approval and for the determination of inhabited or uninhabited actions, the date of the Notice of Filing issued by LAFCO shall be the determining date for the number of registered voters residing within the affected area.

5. **PLAN FOR SERVICE** (Amended May 17, 1989 and December 20, 2000.)

The plan for service shall be prepared and submitted by each local agency affected by a proposed change of organization, regardless whether that proposal

is initiated by resolution or petition. In the case of a proposed annexation, the plan for service must demonstrate that the range and level of services currently available within the study area will, at least, be maintained by the annexing agency. For those proposals involving a reorganization consisting of annexations to multiple agencies, a plan for service shall also be required for each affected agency.

PROCEDURE AND STANDARDS FOR REVIEW:

1. The Plan for Service submitted shall include a narrative description of all the following information:
  - a. A description of the level and range of each service to be provided to the affected territory.
  - b. An indication of when those services can feasibly be extended to the affected territory.
  - c. An identification of any improvement or upgrading of structures, roads, water or sewer facilities, other infrastructure, or other conditions the affected agency would impose upon the affected territory.
  - d. The Plan shall include a Fiscal Impact Analysis which shows the estimated cost of extending the service and a description of how the service or required improvements will be financed. The Fiscal Impact Analysis shall provide, at a minimum, a five (5)-year projection of revenues and expenditures. A narrative discussion of the sufficiency of revenues for anticipated service extensions and operations is required.
  - e. An indication of whether the affected territory is, or will be, proposed for inclusion within an existing or proposed improvement zone/district, redevelopment area, assessment district, or community facilities district.
  - f. If retail water service is to be provided through this change of organization, provide a description of the timely availability of water for projected needs within the area based upon the factors identified in Government Code Section 65352.5.
2. The Plan for Service shall be prepared and submitted by the local agency providing the service for all proposed changes of jurisdiction, regardless whether that proposal is initiated by resolution or by petition.

3. The Plan for Service shall be signed and dated by an official representative of the affected city or district(s), certifying the completeness and accuracy of the Plan.
4. The Plan for Service submitted for each proposal shall be attached to the staff report and distributed for review by the Commission, affected agencies, and the public no less than five days prior to the scheduled hearing.
5. In the case of a proposed annexation or reorganization including annexation, the Plan for Service must demonstrate that the range and level of services currently available within the study area will, at least, be maintained by the annexing agency.
6. In the case of a proposed reorganization consisting of annexations to multiple agencies, the Plan for Service shall address each of the items specified above for each affected agency.

6. **EFFECTIVE DATE AS A FUNCTION OF THE CERTIFICATE OF COMPLETION** *(Adopted June 13, 1979.)*

Unless otherwise specified by the Commission, the effective date for all actions shall be the date of issuance of the Certificate of Completion.

7. **REQUESTS FOR RECONSIDERATION** *(Adopted January 24, 1979; Amended April 9, 1980, June 8, 1983, May 18, 1988, August 29, 1990 and legislatively amended January 1, 2001.)*

Requests for reconsideration will be granted only when the petitioner can present some compelling new evidence, or show that significant factors relative to the situation were overlooked or have changed. The request shall be submitted in writing to the Executive Officer within thirty (30) days of the Commission's decision. No request shall be deemed filed unless appropriate filing fees are submitted. In the event multiple requests for reconsideration are filed, the Executive Officer will divide a single reconsideration fee among the various petitioners for reconsideration.

The adopted procedure for reconsideration requests is as follows:

Upon receipt of a legally filed request for reconsideration, the Executive Officer shall place the request on the agenda of the next Commission meeting for which notice can be provided. At the hearing, the Executive Officer will present the staff report and recommendations to the Commission and respond to questions. The Commission will then allow submission of any oral or written testimony on the issue; however, at the Chair's discretion, time limits may be placed on those wishing to provide an oral presentation. At the close of the hearing, the

Commission may take one of the following actions:

1. The Commission may approve the request, and adopt a resolution superseding the resolution previously issued;
2. The Commission may deny the request; or
3. The Commission may continue the hearing for a maximum of seventy (70) days.

**8. INCORPORATION POLICIES** *(Adopted March 30, 1994.)*

In accordance with Government Code Section 56815.2, the Governor's Office of Planning and Research (OPR) issued Incorporation Guidelines that provide a step-by-step approach to understanding the cityhood process set forth in the law of the State of California. The San Bernardino LAFCO has adopted the OPR Incorporated Guidelines by reference and has indicated the incorporation proponents should undertake the cityhood process in the manner identified in the Guidelines (copies of the guidelines are included as Appendix 1).

In addition, the Commission has adopted the following policy statements unique to circumstances in San Bernardino County to assist in the guidance of unincorporated communities in their review of governmental options.

1. Incorporation proposals involving land within an existing city sphere of influence will not be accepted for filing. If a cityhood proposal would conflict with an established city's sphere of influence, the incorporation proponents must first initiate, and the Commission must approve, a sphere of influence amendment to exclude the study area from that sphere prior to circulation of formal incorporation petitions.
2. The Commission defines "financial feasibility" to mean the ability of a new city to maintain pre-incorporation service levels, with sufficient resources to provide a municipal-level law enforcement service consistent with the recommendations of the County Sheriff.
3. In determining feasibility, the Commission will consider only those revenues that are currently available to all general law cities. It will not consider revenues derived through special taxes or assessments, nor will it consider hypothetical revenues available through possible actions of a future city council (e.g., utility users taxes) in the determination of financial feasibility.
4. In determining feasibility, the Commission requires that proposed staff salary costs shall be based on an average of similar-sized cities or those cities which have the most comparable population within San Bernardino and Riverside Counties.

5. In determining compliance with Government Code Section 56720, the Commission finds that a "reasonable reserve" is a contingency fund equal to 10% of the projected general and special funds of the new city.
  6. The Commission requires that a new city shall assume jurisdiction over all community-based special districts serving the incorporation area. A clear and compelling rationale must be provided if the continued overlay of a community-based district is proposed.
  7. In order to qualify for incorporation, the community in question must contain a minimum of 10,000 people as determined by available census data or other reliable means (e.g., utility connections), and the sales tax revenues attributable to the study area must at least cover the expected administrative and legislative costs of the new city.
9. **INDIVIDUAL NOTICE OF COMMISSION HEARINGS TO LANDOWNERS AND REGISTERED VOTERS** *(Adopted February 19, 1997; Amended February 17, 1999, February 21, 2001{legislatively required}, April 17, 2002, January 17, 2007, and April 21, 2010)*

1. INDIVIDUAL NOTICE

In implementing the provisions of Government Code Section 56157, the Commission determines that LAFCO staff shall provide individual notice to all landowners and registered voters of Commission hearings within the boundaries of a proposal for change of organization, sphere of influence change, or development-related service contract. In addition, the distance requirements for providing notice to landowners and registered voters surrounding the exterior boundaries, as required by Section 56157, will be determined according to the following criteria:

**PROPOSAL AREA**

Less than 20 acres  
20 acres or more

**DISTANCE**

Four (4) parcels or 700 feet  
Four (4) parcels or 1,350 feet

For the periodic sphere of influence review and update program required by Government Code Section 56425, notice will be limited to the manner required by law unless specific sphere changes are identified.

The adopted procedure for Individual Notice is as follows:

- a. The proponents of a proposal or sphere of influence change shall be required to submit a completed "Assessor Parcel Number Listing" form for the area proposed for change.

- b. LAFCO staff shall utilize the parcel information provided by the applicant to prepare landowner information within and surrounding the proposal for change of organization, sphere of influence change or development-related service contract through data included on the most current Assessment Roll prepared by the County Assessor's office. LAFCO staff shall also utilize the parcel information to coordinate with the Registrar of Voters office to provide information on the registered voters within and surrounding the area proposed for change.
- c. The parameters for preparing the notice for surrounding landowners and registered voters by LAFCO staff shall include the distance requirement, or number of parcels, in a linear direction from all points of the area proposed for change.
- d. The individual notice of Commission proceedings shall be provided for all changes of organization, sphere of influence changes or development-related service contracts. Exceptions to this requirement are noted in Items 2 and 3 below.

## 2. AUTOMATIC WAIVER OF INDIVIDUAL NOTICE

In implementing Government Code Section 56157, the Commission determines that for a dissolution, merger, or establishment of subsidiary district; formation or consolidation of special districts; activation or divestiture of powers for special districts; consolidation of cities; or incorporation or disincorporation of a city proposal, the individual notice requirement will be waived on the basis that such items routinely exceed 1,000 notices. As required by §56157, an 1/8<sup>th</sup> page legal ad will be placed in a newspaper of general circulation within the area of consideration.

## 3. WAIVER OF INDIVIDUAL NOTICE

Pursuant to Government Code Section 56157, in cases where such a change would involve mailing more than 1,000 notices, the Commission may waive the individual notice requirement and direct its staff to publish a 1/8<sup>th</sup> page legal ad in a newspaper of general circulation within the area. However, the Commission directs that individual notice to landowners and registered voters shall not be waived for city island annexations filed pursuant to Government Code Section 56375.3, even if it includes more than 1,000 notices.

The adopted procedure for the publication of 1/8<sup>th</sup> page legal ad in lieu of individual notice to landowners and registered voters, is as follows:

- a. After consultation with the applicant, if the Executive Officer has identified controversy related to the proposal, no waiver shall be granted.
- b. Where no controversy has been identified by the Executive Officer, the waiver will be tentatively authorized subject to the following:
  - i. The Executive Officer is to provide individual notice to each Commission member identifying the determination of no controversy and the preliminary determination to waive individual notice.
  - ii. If the Executive Officer receives objection from any Commissioner to the tentative determination, no waiver shall be granted.

Regardless of the waiver of individual notice, the requirement for completion of the Assessor Parcel Number Listing form for the proposal area will be maintained.

**10. WAIVER OF LAFCO LEGAL COUNSEL CONFLICTS OF INTEREST** *(Adopted May 18, 2005)*

Subject to procedures defined below, the Commission authorizes the Executive Officer to waive conflicts of interest under Rule 3.310 of the California Rules of Professional Conduct for LAFCO Counsel's public agency clients.

**PROCEDURE:**

LAFCO Counsel and the Executive Officer shall discuss each potential conflict and make the following determinations:

- a. Where controversy is identified by either party, no waiver is approved.
- b. Where no controversy is identified, a waiver will be tentatively approved subject to the following:
  - 1) In each case where a waiver is tentatively approved, the Executive Officer shall individually notify the Commission members of his/her proposed decision.
  - 2) In the event the Executive Officer receives no objection from any Commissioner, the waiver is approved.

**11. ISLAND ANNEXATION PURSUANT TO GOVERNMENT CODE SECTION 56375.3** *(Policy was repealed and replaced by action of the Commission March 31, 2005; Amended October 18, 2006)*

1. For the purpose of applying the provisions of Government Code Section 56375.3, the territory of an annexation proposal shall be deemed “substantially surrounded” if 60% of its boundary, as set forth in a boundary description accepted by the Executive Officer, is surrounded by (a) the affected City or (b) the affected City and adjacent Cities, or (c) the affected City and a service impediment boundary as defined by the Commission to include, but not be limited to, a freeway, a flood control channel or government owned land.
2. The Commission directs that a City that proposes an island annexation proposal as such is defined in Government Code Section 56375.3 shall be required to have conducted a public relations/education effort within the affected area prior to the placement of the item on a Commission agenda for consideration. Such outreach/education efforts shall include, but not be limited to, providing information on the grandfathering of existing legal County uses into the City, costs to the resident/taxpayer associated with annexation, and land use determinations. Documentation of these efforts shall be a part of the staff report presented for consideration by the Commission.
3. The Commission identifies that following passage of SB 89, an urgency budget bill for Fiscal Year 2011-12 removing the motor vehicle in-lieu fees that were provided to incorporations and inhabited annexations completed after 2004, it will no longer automatically require annexation of island areas as a part of a development-related annexation application. The Commission believes that the removal of this discretionary funding renders inhabited annexations unsustainable and discussion of supplemental funding would necessitate a protest process.

In order for the Commission to be apprised of the effects of this change in philosophy and policy, it directs that upon receipt of a development-related annexation or reorganization application, which anticipates development of 500 or more dwelling units and/or 500,000 square feet of commercial/ industrial development, LAFCO staff shall, within 90-days, place an item on the Commission’s Information Item calendar to review that City’s unincorporated island areas which meet the criteria identified in Government Code Section 56375.3. It is understood that this is a policy declaration of the Commission which may be overridden based upon individual circumstance.

12. **CONDUCT OF PROTEST HEARINGS** (Adopted December 20, 2000; Amended November 21, 2001)

The Commission determines that the responsibility for conduct of protest hearings, including notice and evaluation of protest levels, is delegated to the Executive Officer. The Executive Officer shall issue the final resolution certifying the completion of the proceedings based upon the level of protest submitted.

12. **RESOLUTION OF INITIATION REQUIREMENT** (Adopted June 20, 2012)

The Commission requires that for any resolution initiating an application for change of organization, in addition to the requirements outlined in Government Code Section 56654, it shall include a provision acknowledging the Commission's requirement for legal indemnification as outlined in Policies 10 and 11 of the Accounting and Financial Section of this Manual.

13. **DISADVANTAGED UNINCORPORATED COMMUNITY ANNEXATION** (Adopted June 20, 2012)

- (a) LAFCO shall utilize the ESRI Business Analyst Online, a web-based application, to develop the demographic data needed to define a "disadvantaged unincorporated community" as outlined in Government Code Section 56033.5. In addition, a community, as identified in this section, shall be defined as meaning an inhabited area that is comprised of no less than 10 dwellings adjacent or in close proximity to one another.
- (b) Based upon local circumstance the Commission determines that the requirement for imposition of subsection (A) of Government Code Section 56375(a)(8) setting forth the requirement for a supplemental annexation to the City of the disadvantaged unincorporated community shall be imposed as follows:
  - 1) Valley and Mountain Cities – annexation greater than 10 acres
  - 2) North and South Desert Cities – annexation greater than 25 acres
- (c) The Commission determines that no annexation required to be submitted pursuant to this section shall create an island or peninsula of unincorporated territory substantially surrounded by the City to which the annexation is proposed or the annexing city and an adjacent city.
- (d) The Commission determines that in implementing subsection (B) (ii), it shall consider written evidence of opposition to include an application for sphere of influence removal or petitions for creation of a new government which were unsuccessful.

## **OUT OF AGENCY SERVICE CONTRACTS**

### BACKGROUND

Beginning January 1, 1994 the Local Agency Formation Commission was charged with the responsibility for reviewing and taking action on a city or district contract to extend service outside its jurisdiction under the provisions of Government Code Section 56133. These are unique actions not directly related to the processing of other types of proposals as defined in the Cortese-Knox-Hertzberg Local Government Reorganization Act.

### IMPLEMENTING POLICIES

LAFCO has adopted policy declarations which affect the implementation of its obligations under Government Code Section 56133. They are:

#### A. **DEFINITIONS:**

The definition of terms that follows has been developed to assist in the implementation of Government Code Section 56133 since its terminology, in some areas, is not reflective of current statutory definitions or has no statutory definition within Cortese-Knox-Hertzberg:

1. "New or extended services" shall mean for Cities, the provision of those services authorized a city under its enabling legislation; and for Special Districts, service shall remain as defined in Government Code Section 56074. It is important to note that a District would be precluded from providing a "new service" unless it has been first authorized that service under existing special district regulations regarding activation of latent functions or services.
2. "Contract or agreement" shall mean a contract, agreement, or other legal instrument, which requires or agrees to the delivery of service to property.
3. "Written approval of the Commission" shall mean for development related contracts, the adoption of a resolution of the Commission approving the service agreement/contract at a noticed public hearing; for non-development related contracts written approval of the Commission shall mean the document signed by the Executive Officer authorizing the completion of the contract.
4. "Affected County" shall be defined in the same manner as Govt. Code Section 56012 but relating to the area to which contractual

service will be delivered.

5. "Anticipation of a later change of organization." The inclusion of an area to be served within the sphere of influence of the serving agency may be sufficient to comply with this provision.
6. "Public Agency" shall be defined in compliance with Government Code Section 56070. The statutory definition of Public Agency is "the state or any state agency, board or commission, any city, county, city and county, special district or other political subdivision, or any agency, board or commission of the city, county, city and county, special district, or other political subdivision".

The definition of public agency does not include a private or mutual water company. Any contract by a city or district to extend service to these types of service companies would require approval from the Commission prior to contract execution.

7. "Health and safety emergency concern" shall mean the extension of service to alleviate an immediate health and/or safety problem. Such connections would be limited to the provision of water and/or sewer service to an existing structure, the connection to a failing mutual or private water system requiring auxiliary service, the provision of fire protection and/or paramedic services as supplemental or alternative source for service, and other similar threats related to health and safety.

**B. OPERATING POLICIES:**

At the May 18, 1994 hearing the Commission adopted policies related to implementation of the provision of Government Code Section 56133. On December 20, 2000, the Commission amended its policies to address unique issues of implementation. Those amendments included: (a) an operating policy that delegates authority to the Executive Officer to approve or conditionally approve health and safety related service agreements/contracts and/or non-development related service extension; and (2) a policy which relates to the acquisition of a private water system by a public jurisdiction. This acquisition would require the city or district to continue the service and allow additional connections to the infrastructure without regard to the question of spheres of influence. In order for cities and districts to utilize this special policy it requires that they provide the Commission with documentation of the certificated service area of the system acquired. This documentation will be maintained on file by LAFCO for future reference.

The following are the adopted LAFCO policies:

OUT-OF-AGENCY SERVICE CONTRACTS OR AGREEMENTS (Adopted May 18, 1994; Amended December 20, 2000.)

1. The Commission has determined that the Executive Officer shall have the authority to approve, or conditionally approve, proposals to extend services outside jurisdictional boundaries in cases where the service extension is proposed to remedy a clear health and safety concern. In addition, the Executive Officer shall have the authority to approve or conditionally approve service extensions where the services in question will not facilitate development (for example, an inter-agency contract for fire protection services). In cases where the Executive Officer recommends denial of a proposed service extension, that proposal shall be placed on the next agenda for which notice can be provided. After the public hearing, the Commission may approve, conditionally approve, or deny the contract.
  
2. In the case where a city or district has acquired the system of a private or mutual water company prior to the enactment of this legislation, those agencies shall be authorized to continue such service and provide additional connections within the certificated service area of the private or mutual water company defined by the Public Utilities Commission or other appropriate agency, at the time of acquisition without LAFCO review or approval as outlined in Government Code Section 56133. The continuation of service connections under this policy shall not be constrained by the sphere of influence of that local agency at the time.

Proposals to extend service outside this previously defined certificated area would come under the provisions of Govt. Code Section 56133 for the review and approval by the Commission prior to the signing of a contract/agreement for the provision of the service.

## C. PROCEDURES

Unlike the normal initiation process for proposals for jurisdictional change, Government Code Section 56133 provides that only a city or district may request LAFCO review of an out-of-agency service agreement/contract.

Government Code Section 56133 gives LAFCO the authority to review and approve, approve with conditions, or deny these agreements/contracts. For all development-related applications for service, the item will be considered by the Commission at a noticed public hearing. The authority for action for non-development-related agreements/contracts has been delegated to the LAFCO Executive Officer by the Commission, pursuant to policies adopted on December 20, 2000.

A. Application for Review:

The filing requirements for review of an out-of-agency service contract/agreement shall consist of:

1. Official Request from Applying Agency. A written request signed by the City Manager/District Manager requesting approval for an out-of-agency service agreement/contract or an adopted resolution from the city/district proposing to serve outside its boundaries must be submitted.
2. Payment of Appropriate Filing Fees. The applying agency must submit as part of the application the appropriate filing fees as outlined in the LAFCO Fee Schedule in effect at the time of application. In addition, these types of applications are also subject to the following deposits: legal counsel, environmental review, and individual notice. Applicants shall be required to reimburse the Commission for all charges and costs in excess of the deposits outlined above or will be refunded the balance at the close of the application.
3. A completed application form including the submission of a copy of the proposed agreement/contract that has been signed by the property owner(s) and, if necessary, the agency extending service(s), and maps showing the location of the property to be served, existing agency boundaries, the location of the existing infrastructure, and the proposed location of the infrastructure to be extended.
4. Any other information deemed appropriate by the Executive Officer in order to review the service extension request based upon its special circumstances.

B. Environmental Review Requirements:

The review of a service agreement/contract request will be subject to the review procedures defined in the California Environmental Quality Act (CEQA) and the San Bernardino LAFCO CEQA Guidelines. LAFCO will act as the Lead Agency under CEQA for its environmental review of any service extension request.

If an environmental assessment/analysis was prepared for the project associated with the service extension request (i.e. the County or agency's environmental analysis for a proposed Tentative Tract, Conditional Use Permit, etc.) and LAFCO Staff was afforded the opportunity to evaluate and comment during the Lead Agency's environmental review process,

then LAFCO can act as a Responsible Agency under CEQA for its environmental review of a service extension request. A complete set of the adopted environmental documents prepared for the project, a copy of the filed Notice of Determination/Notice of Exemption, and a copy of the Department of Fish and Game fee receipt must be submitted as part of the application.

## D. REVIEW PROCEDURES

- A. Development-related agreements/contracts associated with the development of tracts, subdivisions, a single-family dwelling unit, a commercial/industrial development on a parcel, or other types of development-related projects will require the following review:
1. The city or district proposing to provide service(s) outside its boundaries shall submit to LAFCO a completed application, with all its component parts as previously defined, for review and consideration. Within 30 days, the LAFCO Executive Officer shall notify the entity whether or not the application filing is complete. If incomplete, the applying agency will be notified of the specific insufficiencies within 30 days, as required by law.
  2. The LAFCO staff shall forward a copy of the application to various County Departments for their review and comment.
  3. The LAFCO staff shall also forward the application for service extension to the Commission's environmental consultant for review. The Commission shall act as the Lead Agency under CEQA and shall prepare the appropriate environmental analysis for the application proposal. If an environmental assessment/analysis has been prepared for a project associated with the service extension request, and LAFCO has been afforded the opportunity to evaluate and comment during the Lead Agency's environmental review process, then the Commission may act as a Responsible Agency under CEQA and shall prepare the appropriate environmental analysis for the application proposal.

Completion of the CEQA review process will be required prior to placement on the Commission's agenda.

4. If necessary, a meeting with the applying agency and/or the various departments may be held dependent upon the circumstances and/or issues related to the service agreement/contract. The determination of whether or not to hold the meeting shall be made by the LAFCO Executive Officer.

5. Once these required elements have been completed, the item will be placed on a Commission Agenda. Surrounding property owners/registered voters will be notified of the proposed service extension request through individual notification. At a noticed public hearing, the Commission will consider the staff's presentation and presentations, if any, by interested and affected parties, and make a determination.
  6. The Commission has the authority to approve, approve with conditions, or deny the request for out-of-agency service extension. The Commission's determination and any required findings will be set out in a resolution which specifies the area to be served, the services to be provided, and the authority of the agency to provide its services outside its boundaries.
- B. Non-development related agreements/contracts (Administrative Review by LAFCO Executive Officer) that are related to providing service to an existing dwelling unit, commercial building, etc. or those contracts between public agencies for such items as fire protection mutual aid, etc. will be processed as follows:
1. Prior to the execution of an agreement/contract for service outside their boundaries, the city/district proposing to provide the service shall submit to LAFCO a completed application, with all its component parts as previously defined, for review and consideration.
  2. Completion of the CEQA review process will be required prior to action by the Executive Officer. If there has been no environmental determination made by the applying agency, LAFCO will be the Lead Agency and will prepare the required environmental analysis. Such a determination will be required prior to authorization of the service extension.
  3. The Executive Officer's administrative review will include the following determinations:
    - a. The proposed service extension is either nondevelopment-related and/or involves health and safety concerns as defined by Commission policy.
    - b. The area to be served is within the sphere of influence of the agency requesting to provide service outside its boundaries.
    - c. The environmental analysis/assessment, as required by CEQA, has been completed.

4. The Executive officer can approve, approve with conditions, or deny the request for service extension. If the Executive Officer's recommendation is denial, that determination will be placed on the next available Commission agenda for which notice can be provided for discussion of the determination.

## **SERVICE REVIEW POLICIES**

### **SERVICE REVIEW** (Adopted May 21, 2003)

Through adoption of AB 2838, the State of California established the requirements for conducting Service Reviews of municipal service providers (Government Code Section 56430) as well as requiring sphere of influence updates for all agencies under LAFCO purview on a reoccurring cycle. In accordance with the requirements outlined in §56430, the Governor's Office of Planning and Research (OPR) in 2003 issued Municipal Service Review Guidelines that provide a step-by-step approach to understanding the service review process as set forth in the laws of the State of California. On May 21, 2003, the San Bernardino LAFCO adopted the OPR Municipal Service Review Guidelines by reference for its use during the conduct of its Service Reviews. In 2007 the legislature amended §56430, reducing the number of factors to be considered and establishing a deadline for consideration. The Guidelines were not updated after these changes; however, the Commission has retained them as a source document for the conduct of service reviews. A copy of the guidelines is included as Appendix 2 of this manual.

### 1. **SERVICE REVIEW POLICIES** (Adopted February 20, 2002; Amended May 21, 2003)

The Commission determines that service reviews are an important tool in promoting logical, orderly, and efficient service patterns for local agencies. The Commission also recognizes that such reviews, to be meaningful, must be accomplished with the participation and cooperation of affected local agencies. Finally, the Commission recognizes that the applicability of specific factors required for such reviews may substantially vary based on the unique conditions and circumstances found in San Bernardino County.

#### Approach:

In furtherance of the goals of Government Code Section 56430, the Commission determines to conduct such service reviews on a sub-regional basis, utilizing its community-by-community sphere approach and policies. Within this parameter, the Commission shall provide a function-by-function review (e.g., water functions, fire functions, etc.) of municipal services. The service review shall include the participation of management staff and/or board members responsible for delivering such services.

Responses to Statutory Findings:

The Commission recognizes that Section 56430 requires written responses to specific determinations in the conduct of service reviews. The Commission also recognizes, however, that some or all of the factors listed may not be applicable to specific reviews. Based on discussions, testimony, and appropriate other input from affected agencies and interested parties, the Commission finds that its statutory obligation for written findings will be fulfilled by indicating that, "No substantive issues relative to this factor were identified" when appropriate. *For further clarification see Policy #13 in the general Application Processing Section related to Disadvantaged Unincorporated Communities.*

The adopted service review procedures are:

It is the Commission's position that service reviews must be conducted, whenever possible, through a participative and cooperative approach with affected agencies. As the Commission begins to undertake its sphere review/service review responsibilities, the first step shall be to convene a meeting with managers/board members of affected agencies.

Through those discussions, specific service review factors can be identified for further review, and some review factors might be set aside as not requiring further study. Where disagreements among agencies or LAFCO staff might exist as to the applicability of a specific factor, the matter will be brought back to the Commission for a public hearing and decision.

The Commission determines that it shall incorporate its findings related to the service reviews within the staff report prepared for the required sphere of influence update/study. This streamlines the process and provides for a more efficient Commission hearing schedule. The Commission will then incorporate its sphere of influence review/update and service review determinations within one resolution.

**2. SERVICE REVIEW REQUIREMENT FOR SPHERE OF INFLUENCE AMENDMENTS (Adopted February 20, 2002; Amended May 21, 2003)**

The Commission adopts the following policies relative to sphere of influence amendments:

1. An amendment to a retail water district sphere of influence will require a service review if both the following are met:
  - a. The area is currently outside the sphere of influence of the appropriate wholesale purveyor.

- b. Objection is received from any agency that provides water service and whose Sphere of Influence underlies or is adjacent to the subject territory.
2. Notwithstanding the foregoing, the Commission reserves the discretion to conduct a service review when it deems appropriate based upon unique conditions and circumstances.

## **SPHERE OF INFLUENCE**

### **SPHERES OF INFLUENCE:**

Government Code Section 56425 requires that LAFCO establish spheres of influence for each city and special district under its purview within San Bernardino County. In addition Government Code Section 56425(g) requires that the Commission shall review, as necessary, and update an agency's sphere of influence every five years.

### **PURPOSE:**

Government Code Section 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." It is an area within which a city or district may expand, over an undefined period of time, through the annexation process. In simple terms, a sphere of influence is a planning boundary within which a city or district is expected to grow into over time. In those instances where a sphere of influence is drawn less than the jurisdictional boundary of the agency, it is the Commission's position that overtime a reorganization should take place to address a redistribution of service provision.

The purpose of a sphere of influence is to encourage the "logical and orderly development and coordination of local government agencies so as to advantageously provide for the present and future needs of the county and its communities." The following enumerated items comprise the statement of purpose adopted by San Bernardino LAFCO for spheres of influence:

1. To promote orderly growth of communities, whether or not services are provided by a city or district (board governed or independently governed);
2. To promote coordination of cooperative planning efforts among the county, cities, special districts, and identifiable communities by encouraging compatibility in their respective general plans;
3. To guide timely changes in jurisdiction by approving annexations, reorganizations, etc., within a sphere of influence only when reasonable and feasible provision of adequate services is assured;
4. To encourage economical use and extension of facilities by assisting governmental agencies in planning the logical and economical extension of governmental facilities and services, thereby avoiding duplication of services;
5. To provide assistance to property owners in relating to the proper agency to comprehensively plan for the use of their property;

6. To review, update, and/or change existing spheres of influence periodically to reflect planned, coordinated changes in factors which impact on spheres of influence; and
7. To encourage the establishment of urban-type services only within an adopted sphere of influence.

The Commission emphasizes that a sphere of influence is a planning tool and the establishment of a sphere of influence, or the inclusion of territory within a sphere of influence of an existing governmental entity, does not automatically mean that the area is being proposed for annexation or development.

1. Establishment of a Sphere:

As outlined under state law, the Commission is designated as the public body responsible for determining spheres of influence for each city and district within its jurisdiction.

As a function of incorporation and as outlined in Government Code Section 56426.5, the Commission must establish a sphere of influence for a newly-incorporated city or a newly formed special district within one year of its effective date. Usually within six months of the agency's effective date, the LAFCO staff notifies the city or district of the requirement pursuant to state law. The sphere proposal may be initiated by the Commission, the city council, special districts board of directors or the County Board of Supervisors, through adoption of a resolution of the governing body.

State law also stipulates that a sphere of influence will not be established or changed without specific review and study independent of any action before the Commission at the time. Public hearings are held to review sphere of influence proposals such as establishment, amendment, or in connection with any proposed annexation, which may or may not involve another agency's sphere of influence.

2. Factors of Consideration:

As part of a sphere of influence review and as outlined in Government Code Section 56425(e), LAFCO is required to review four "factors of consideration" in connection with any sphere of influence proposal. The factors of consideration are as follows:

1. The present and probable land uses within the area, including agricultural and open space lands;
2. The present and probable need for public facilities and services in the

study area;

3. The present capacity of public facilities and the adequacy of public services that the agency provides or is authorized to provide; and
4. The existence of any social or economic communities of interest in the study area, if the Commission determines they are relevant.

In these categories of review, a city or district must show that its planning activities can be beneficial to the area, and that the initiation of those activities is appropriate. None of the above factors by themselves shall be deemed to be a determining factor in the establishment or revision of a sphere of influence for a city, district, or community area, but shall be reviewed as part of the total project.

The factors of consideration noted above are addressed individually within the staff's report for each sphere of influence proposal.

### COMMISSION POLICY FOR SPHERES OF INFLUENCE:

The approaches and/or methods listed below are policies adopted by San Bernardino LAFCO. The policies guide the Commission's review in its determination of spheres of influence, periodic reviews and/or updates, and any amendments of those sphere boundaries.

1. Concurrent Sphere Reviews:

The Commission may include additional agencies as part of its review of a sphere of influence proposal. In considering the sphere of influence of a community, the Commission will concurrently evaluate all agencies serving that community, and as a policy guideline, it will need to establish a single, coterminous sphere for all such agencies.

2. Community-by-Community Approach:

The community-by-community approach is a guide used to establish spheres of influence. The idea was adopted by San Bernardino LAFCO prior to the mandate for spheres of influence, and includes the practice of looking at a total area, which could be considered a community, and defining its boundaries. This approach also considers the existence of inter-related economic, environmental, geographic, and social interests, and attempts to harmonize the conflicting plans and services of the various service entities. Under this approach, an attempt is made to keep the spheres of influence of the various service districts as nearly the same as possible.

3. Coterminous Boundaries:

The Commission may establish a sphere of influence which is coterminous with existing city/district boundaries when it is not feasible for the public agency to expand beyond its present boundaries. However, as outlined in state law, a sphere of influence must be established for each city and district, regardless whether the sphere boundary is the same as the city or district boundary.

4. Zero Sphere of Influence:

The Commission may designate a “zero” sphere of influence indicating its position that a change of organization should take place assigning the entity’s service obligations and responsibilities to another agency. Such future action could be either a consolidation or dissolution process.

5. Environmental Review for a Sphere:

A sphere of influence proposal requires review of the environmental aspects of the proposed sphere. The environmental review process is a requirement outlined in the California Environmental Quality Act (CEQA) that applies to the review of sphere of influence proposals. In compliance with CEQA and the State CEQA Guidelines, San Bernardino LAFCO adopted its own Guidelines and Policies Implementing CEQA on June 22, 1990 with a subsequent amendment adopted on January 18, 1995. The Commission’s Guidelines and Policies tailor the general provisions of CEQA to LAFCO’s specific functions as both a “Responsible” and a “Lead” agency. The Guidelines and Policies also provide specific procedures used by San Bernardino LAFCO to implement CEQA.

6. Exclusion of Territory:

Under certain circumstances, a sphere of influence may exclude portions of the existing boundaries of a city or district. The Commission encourages reorganization and special studies in this situation to make final determination of which city or district should serve.

For example, certain portions of the City of San Bernardino are surrounded on three sides by the City of Highland, as there are certain portions of the City of Highland that are surrounded on three sides by the City of San Bernardino. In these situations, a sphere of influence study may be initiated to determine which public agency could better serve the area of review. The sphere of influence study would include a review of the possibility of excluding territory from one jurisdiction and the placement of the same territory in another jurisdiction’s sphere of influence. The purpose of excluding territory would be an attempt to straighten

irregular boundaries, and eliminate confusion arising from multiple jurisdictions.

7. Modification of a Sphere Review Area:

During the review of a sphere of influence proposal, the Commission may modify the area of review by expanding or reducing the area of review. The expansion or reduction of a sphere can be for several reasons, such as to include areas that may be better served by a public agency, or exclude areas that may be better served by another public agency.

8. Periodic Review/Update of a Sphere:

As a function of its duties and responsibilities, LAFCO is required to periodically review and/or update spheres of influence. Government Code Section 56425(e) requires the Commission to review and update, if necessary, all spheres of influence for cities and special districts at least once every five years.

The periodic sphere review does not preclude a public agency (city or district), or an individual from initiating a sphere proposal. The purpose of the periodic sphere review plan is to keep abreast of changes occurring within the public agencies under the jurisdiction of LAFCO.

9. Requirement for a Sphere Review in Relationship to Annexation:

State law precludes the Commission from approving annexation proposals lying outside of current sphere of influence boundaries for the affected city or district. If an annexation proposal lies outside the sphere of influence of a city or district, the annexation proposal must also include a sphere review. The joint sphere and annexation review is to maintain consistency in city or district boundaries and their sphere boundaries, for the extension and provision of services as it relates to proposed annexation sites.

10. Responsibility/Obligation for a Sphere of Influence Area:

When a sphere of influence is assigned, a city or district is required to commence long range land use and service planning activities, thereby enabling it to respond to any annexation requests it might receive from landowners or residents within the sphere. By accepting a sphere of influence, a city or district agrees to plan for the provision of services.

11. Urban Development within a City Sphere:

LAFCO takes the position that any new urban development which occurs within a city sphere of influence should take place as close to the city's

urban area as possible. This position is emphasized for two reasons: First, so that contiguous areas may easily be annexed to the city; and secondly, so that the new urban area can be served by reasonable extension of the city's already developed municipal services.