

## Questions for LAFCO

### Consolidation vs. Reorganization

1. Please explain the statutory difference between district reorganization and consolidation.

**Reorganization:** A reorganization is defined as *two or more changes of organization contained within a single proposal*. (GC §56073). Changes of organization include annexation, consolidation, dissolution, etc. (GC §56021). A reorganization can include annexation of KFPD to KPPCSD, dissolution of KFPD, and activation of a new function for the CSD (i.e., fire service). An application for an annexation and dissolution can be initiated by either an affected local agency/agencies (e.g., district(s)), or by a petition of registered voters or landowners (25% or more). An application to activate a latent power must be initiated by the affected local agency (e.g., KPPCSD).

Consolidation is defined as *the uniting or joining of two or more cities located in the same county into a single new successor city or two or more districts into a single **new** successor district* (GC §56030). Consolidation can be initiated by resolution of a majority of the subject agencies, by other affected local agencies (i.e., district, city, county), by a petition of registered voters or landowners (5% or more), or by LAFCO in conjunction with a special study or municipal service review.

If the application is submitted by resolution of both affected districts, then LAFCO shall approve the consolidation with or without terms and conditions.

**\***If the application is submitted by a petition of registered voters or landowners, the petition must include the reason for the proposal, all proposed changes of organization including reorganization and activation of latent powers, proposed terms and conditions, and other factors.

See attached flowcharts for process details.

2. From a LAFCO staff perspective, is it more complicated or the same to create a new district rather than consolidate or reorganize under an existing CSD district?

Both processes are complex. I share the opinion with other LAFCO's that it's more complicated to consolidate and create a new district than annexation/dissolution.

### Proposal for Consolidation: Timing, Map boundaries, Financial analysis, MSR

#### Proposal Timing

Does LAFCO require the Proposal to be provided to either the public or LAFCO in advance of initiating the Public Signatures Petition? **No proposal is required prior to collecting signatures. However, certain information is required as part of the petition (see \* above).**

### Map Boundaries

1. Given that the consolidation of the two special districts will create a new successor district whose boundaries will not change from that of the two districts, what form of legal description of the boundaries is required to meet LAFCO's requirements? **I emailed the State Board of Equalization asking if a plat and legal description are needed for this type of boundary reorganization and will let you know when I receive a response.**
2. The 2011 LAFCO Municipal Services Review on Law Enforcement Services indicates that LAFCO considers the boundaries of both districts to be the same. However, one district serves the small, unpopulated EBMUD property that is permanently used for drinking water storage and treatment. Do both district boundaries have to be the same before LAFCO can approve consolidation? **No, both boundaries do not need to be the same. The KPPCSD boundary is slightly larger than the KFPD boundary. Consolidation/reorganization will retain the existing boundary/sphere of influence of the KPPCSD.** If yes, what is the required process? ?

### Financial Analysis

1. At what stage of the process does LAFCO require that the Proposal include:
  - Financial history of the two special districts (at what level of detail?)
  - Financial forecasts of each district assuming no consolidation?
  - Financial forecasts of the proposed consolidated district? If so, how far into the future?

**The LAFCO application for this type of proposal requires a financial analysis upon submittal. GC §§ [56826.5(1)–(3), 56881(b)].**

**In addition, a Plan for Services is required (GC §56653), which must include level, range and timing of services to be provided; upgrades/improvements of facilities, structures, etc.; and information as to how services will be financed.**

2. Does LAFCO require that such a financial presentation be produced by a financial analysis firm or individual who is certified, such as a certified public accounting firm or certified public accountant? **We recommend that a financial analysis be prepared that addresses the financial feasibility of the new or reorganized district. We have a short list of financial firms that deal with LAFCO proposals (see #5 below).**
3. Is the purpose to determine if the revenues transferring to the new district are sufficient to cover all the services to be provided? **The purpose is to determine the cost of providing services (i.e., less than or substantially similar to current service costs) and if sufficient revenue will be available follow the reorganization/consolidation.**
4. Will the group of residents sponsoring the petition have to pay for the financial analysis, or is there a source of government funds that can be used to pay if enough voters sign the petition to satisfy the requirements? Who would hold the contract with the financial analysis provider? **I am not aware of any government funds available for the financial analysis.**

The “applicant” assumes costs associated with the financial analysis. Either the applicant can enter into an agreement with a consulting firm, or LAFCO can contract with a firm to prepare the fiscal analysis subject to the applicant reimbursing LAFCO.

5. If a firm is required, can LAFCO recommend a few financial analysis firms? LAFCO is familiar with Berkson Associates, Economic & Planning Systems, and RSG, Inc., but the choice of a firm is the applicant’s decision.
6. Does LAFCO have to approve the petitioners’ selection of a professional financial analysis firm?  
No
7. What is the estimated cost of a required financial analysis? The most recent fiscal study which also included a municipal service review (MSR) prepared for the fire district reorganization was approximately \$60,000. This study was prepared by AP Triton.

#### **Municipal Services Review (MSR)**

1. Would LAFCO require a Municipal Service Review (MSR) be conducted prior to the submission of the proposal? The last MSR prepared for KPPCSD was in 2019 and covering only park & recreation services. The last MSR covering KFPD was in 2016 and provided a cursory review of the district. It is recommended that a MSR be prepared in conjunction with the consolidation/reorganization proposal. The MSR may be included with the fiscal study.
2. If so, would LAFCO conduct the MSR or would that be the responsibility of the petitioners? The “applicant” assumes costs associated with the MSR. Either the applicant can enter into their own agreement with a consulting firm, or the applicant can request that LAFCO contract with a firm to prepare the MSR. This is subject to reimbursement by the applicant. Here are a few firms with whom LAFCO is familiar: Berkson Associates, Economic & Planning Systems, and SWALE, Inc.

#### **Redirection of Each Special District’s Property Tax Revenues to the Successor District**

1. What are the procedural steps regarding the redirection of property tax revenues to the consolidated district that need to be taken by LAFCO and/or the county board of supervisors, so that the new district is funded to the same degree as the two pre-consolidation districts collectively? The County Board of Supervisors, on behalf of the districts, negotiates the exchange of property tax revenue in consultation with the affected districts [R&T Code §99(b)(5)].

Do the petitioners have any say relative to the exchange of each special district’s property tax revenues to the successor district pursuant to Revenue and Taxation Code section 99(b)(5)? The affected districts will be consulted. I am not aware of any provision whereby the petitioners are involved in the property tax negotiations.

2. At what point in the process is the property tax redirection determined? Typically, prior to the Commission’s action on the proposal.

## CEQA Determination

Is a CEQA determination part of the consolidation proposal? If so, who is the lead agency in making that determination? Since there would be no changes in services or change in boundaries with the successor district and thus no environmental impact, would a Categorical Exemption be appropriate? [If the application is submitted by a local agency \(i.e., district\), then the local agency is the lead agency. If the application is submitted by a petition of either landowners or voters, or initiated by LAFCO, then LAFCO is the lead agency.](#)

## Consolidated District Board

1. Pursuant to Government Code section 61030, when consolidating two or more special districts, LAFCO can temporarily increase the size of the board of directors of the new successor district to 7, 9 or 11 members. What typically occurs when two district boards are consolidated into one? Are most board seats preserved until the next election cycle? We assume the consolidated board must have an odd number of directors. How is it determined which seat(s) will be eliminated? Or would LAFCO expand the number of seats to 11? If so, what would be the process for filling the new seat? [LAFCO can temporarily increase the number of members to serve on the board of directors of the consolidated or reorganized district to 7, 9, or 11 as noted above.](#)
2. Can the petitioners recommend the temporary size of the new board as part of the consolidation proposal? [Yes](#)

## Notice of Intent to Circulate a Public Signatures Petition

1. Government Code section 56700.4 requires that before circulating a petition for change of organization, the proponents shall file with the LAFCO Executive Officer a Notice of Intent to Circulate a Petition setting forth the reasons for the proposal. Does LAFCO require specific information to be provided in the notice, for example, detailing the reasons for the proposal? [Contra Costa LAFCO does not have specific form pertaining to Notice of Intent to Circulate a Petition. We recommend you follow the provisions in GC §56700.4.](#)

[If you're in need of a format, Santa Clara LAFCO has a well written sample Notice of Intent to Circulate a Petition/Petition Form \(see attached\).](#)

2. Is there any requirement that the Notice of Intention be posted in a public place or published in a newspaper of record? [None of which I am aware.](#)

## Public Signature Petition Initiating Consolidation

1. What information is required in the public signatures petition to initiate a proposal of consolidation? Government Code section 58034 describes information required in a petition to form a new district. Does this section also apply to the formation of the successor district under consolidation? [Petition requirements can be found in GC §§ 56703-56710.](#)

2. Does LAFCO have a protocol or understanding with the County elections office about the form of the petition and the signature verification process, and if so, where can we learn about it? [Not of which I am aware](#). If not, can we adapt a petition form published by a different county's LAFCO and submit for your and the County's approval? [Yes. I suggest using the Santa Clara LAFCO forms](#).
3. In order for a petition for consolidation to be valid, the petition requires the signature of more than 5% of registered voters. How is the total number of registered voters determined? Is it based on the number registered at the time of the last election; or at the time that the petition with signatures is filed with LAFCO? [Please consult with County Elections](#).
4. Will the signature validation protocol follow what applies in normal petition elections, in which a statistical sample is used depending on the size of the voter pool, or will each and every signature be checked? [Please consult with County Elections](#).

### Indemnification

At the KPOA meeting you mentioned there would need to be an indemnification of LAFCO by the petitioners. Are you aware of the CA Appeals Court ruling against the San Luis Obispo LAFCO regarding indemnification, which concluded that LAFCO does not have the legal authority to require it? How can Contra Costa LAFCO still require an indemnification agreement? [We are aware of the San Luis Obispo lawsuit. In that case, the San Luis Obispo attempted to enforce an indemnification agreement against an applicant for the applicant's claim against LAFCO. LAFCO Contra Costa LAFCO enters into indemnification agreements with applicants to that in the event of a lawsuit filed by a third party against an applicant and LAFCO, the applicant will indemnify and defend LAFCO against those third-party claims.](#)

### LAFCO Decision Process

1. Would LAFCO deny the proposal if one, or both, of the special districts, object to the proposal? Which code section references this authority? [Ideally, LAFCO would look for support of the proposed boundary reorganization/consolidation from both districts.](#)

[GC §56668.3 provides that the Commission consider factors provided in GC §56668, as well as "any resolution raising objections to the action that may be filed by an affected agency." Further, the Commission shall give great weigh to any resolution raising objections to the action that is filed by a city or district.](#)

[Also, GC §56857 provides that "... No later than 60 days after the date that the proposal is on the commission's meeting agenda in accordance with subdivision \(a\), any district to which annexation of territory is proposed may adopt and transmit to the commission a resolution requesting termination of the proceedings. The resolution requesting termination of the proceedings shall be based upon written findings supported by substantial evidence in the record that the request is justified by a financial or service related concern..."](#)

2. Since the State statute allows voters or property owners to petition LAFCO to consolidate two districts into a new district, what information or amount of citizen support would convince LAFCO staff and Commissioners that a consolidation or reorganization is the correct action to take? **In making a decision, the Commission must consider numerous factors contained in GC §56668, including population/future growth, adequacy/cost of services, social and economic interests, and any information or comments from affected local agencies, landowners, voters, or residents of the affected territory. No one factor is determinative.**