


# EXECUTIVE OFFICER'S REPORT

To The  
Imperial Local Agency Formation Commission

TO:

COMMISSIONERS:	ALTERNATE COMMISSIONERS:
Michael W. Kelley, Supervisor, Vice-Chair	Jesus E. Escobar, Alternate Supervisor
Ray Castillo, Supervisor	(Vacant) Alternate Public
David H. West, Public	(Vacant) Alternate City
Maria Nava-Froelich, City (Vacant) City	

REPORT DATE: February 4, 2021

FROM: Jurg Heuberger, Executive Officer   
Paula Graf, Analyst

PROJECT: Annexation processing procedures

HEARING DATE: February 25, 2021 TIME: 08:30 a.m.

AGENDA ITEM NO: 9

HEARING LOCATION: El Centro City Council Chambers, 1275 Main St., El Centro, CA 92243

RECOMMENDATION(S) BY THE EXECUTIVE OFFICER (NOT IN ORDER just options available)

## Pertaining to Tax Sharing Process only!

- OPTION #1:**
- (a) Stop accepting and processing annexations for all cities until a new Master Tax Agreement is developed and approved by all cities and County as one agreement.
  - (b)\* Stop accepting and processing annexations for one or more cities until a master tax sharing agreement between that city and county is executed.
- OPTION #2:** Continue to accept and process application but follow Revenue and Tax Code 99 et. Seq. (ramification being significant time delay in overall process)

### **Pertaining to CEQA Compliance:**

- OPTION #1:\*** Require that all cities when starting the land use entitlement process for an annexation project coordinate the process with LAFCO whereby the City and LAFCO act under the concept of “co-lead” with the City being the LEAD but LAFCO having input throughout the process.
- OPTION #2:** LAFCO only acts as a “Responsible Agency” for an annexation where the City is the LEAD Agency for the CEQA process.

### **General Annexation Processing:**

- OPTION #1:** Accept an annexation application concurrent with the City accepting a land use application and process the application as described herein. *(In essence a parallel track for the Land Use, LAFCO and Tax Sharing process)*
- OPTION #2:** Accept an annexation application and only issue a NOF (notice of filing) to the county and city and then wait for the Tax Sharing agreement to be approved by both agencies prior to proceeding with processing the application. Advise applicant that they are at risk if they proceed with the land use entitlement process at the City, and also if LAFCO were to start processing the application, in the event that no tax sharing agreement is reached. *(in essence a serialized process where one follows the other and therefore potentially increases the overall time significantly)*
- OPTION # 3:\*** Accept an application only if there is a master tax sharing agreement in place between the City and County, then process the application in coordination with the City’s land use process whereby LAFCO acts under the concept of “co-lead” for CEQA review purpose.

## Special Report/Direction

### **I: Summary: (historical)**

The purpose of this report is to update the Commissioners on specific ANNEXATION processes and provide background on why some applications seem to take extraordinary time which generate complaints by applicants.

There are three issues that we address in this report. These are:

- Tax Sharing Agreement
- CEQA
- General application process

All these impact how LAFCO, at least I. C. LAFCO has operated to date. Following review of this report the Commission is asked to provide direction on how ICLAFCO will be processing applications in the future.

### **II: Tax Sharing Process:**

The first and recently the most significant reason for extended delays is the Tax Sharing Agreement between two agencies, generally the County and a City. The LAFCO cannot act, meaning bring a project to the Commission, on an application until there is a Tax Sharing agreement between the City and County.

- TAX SHARING AGREEMENT: over the past few years, the negotiations for a tax sharing agreement have taken between 3 months to 24 months. Most often the average has been 6 -9 months. This is generally after or near the end of the land use entitlement process. Hence an application can take several years.
- A number of years ago a MASTER TAX sharing agreement existed which avoided the delays we now see. This was one agreement between the County and all the Cities.
- The tax sharing requirement is under R & T Code Section 99 and has explicit steps that must be followed. **See EXHIBIT "A"**

For the most part the County, LAFCO and Cities have not followed the letter of this statute and frankly LAFCO has not followed the Gov. Code for reasons stated later in this report.

### **III: CEQA:**

In the early to mid-1990's LAFCO frequently found itself at odds with a CEQA document that had been prepared by a City but in LAFCO's view did not meet legal requirements and therefore could not be used by LAFCO. That left two alternatives; (a) file litigation or (b) deny the application.

The solution arrived at was to require that LAFCO be considered a "co-lead" partner in the CEQA process rather than simply act as a responsible agency. In that way LAFCO worked closely with the City staff during the entire CEQA process, providing reviews of drafts, making suggestions, offering alternatives etc., before the City certified the CEQA document.

- In this way when the final document was presented to LAFCO, the document met LAFCO requirements and the process went relatively smooth.
- It needs to be noted that at first there was reluctance by some cities, however over time most understood the benefits and to date it has worked reasonably well. It has also avoided LAFCO writing lengthy comments on a PUBLIC draft which had the tendency to make the city/consultant look bad in the eyes of the applicant or make LAFCO look onerous.

Given that over time this policy has wavered from City to City, the EO has a recommendation at the end of this report.

#### **IV: LAFCO and City Land Use Process:**

The timing on land use approvals vary greatly from city to city and project to project. The City's Land Use approvals at a minimum must include the "pre-zoning" and "CEQA" documents. Typically, that also includes General Plan Amendments, Tract or Parcel Maps and Conditional Use Permits.

The LAFCO cannot bring a project to the Commission, on an application until the land use approvals are received.

Generally, the CEQA process is the factor that takes the most time. For a Mitigated Negative Declaration project, the timing ranges from 5 to 8 months. For an EIR the timing generally is 12 to 15 months.

- The current process has worked well insofar that LAFCO staff and City staff shared information and worked in a cooperative manner to review the potential impacts of a project.
- The current process has also allowed the applicant to modify the project slightly through the process without having to start and stop or start over.
- The current process has avoided confrontational reviews between agencies and even applicants.

#### **V: Conclusion:**

Applicants be it for an annexation or any other governmental permit only have one desire and that is to get their project approved in a quick, efficient and least costly manner. When agencies work closely together it still takes time that applicants often do not understand, but it is significantly less acrimonious than when agencies do not work together or use "serial" processing steps.

Much of the process steps are required by State law which also prescribe time limits; however, I believe that there are ways that local agencies by agreement can streamline and shorten those time limitations to some degree.

#### **VI: Public Notice:**

Public notice for this item before the LAFCO Commission has been given, according to Section 56660 and 56661. Notice was issued in the form of a publication in the Imperial Valley Press at least 21-days prior to said hearing and posted on our webpage.

#### **VII: Report:**

In accordance with Section 56665, the Executive Officer has prepared a report, and presented said report to your Commission and to any public member requesting such report.

### **VIII: EXPLANATION FOR RECOMMENDED OPTIONS:**

The following analysis represents the rationale of the Executive Officer to provide a clear, reasonable, time conscious, and cost-effective approach to processing annexations.

#### **TAX SHARING:**

The most effective way to comply with the R & T codes process is to have a MASTER TAX sharing agreement in place, rather than negotiate each project on a case by case basis. This can either be through a master agreement between the County and all the Cities under one agreement. That was the case in the 1990s, early 2000s.

Given today's climate and the different city development process and philosophies a common agreement seems unlikely and certainly would be very time consuming to prepare. It is an option and with extreme cooperation between all seven cities and the county could be done. To accomplish this all agencies would need to agree in hiring and paying for a consultant, but the question is which agency would be lead.

Perhaps a better option is to have a master agreement between the County and each City as a stand-alone agreement is more logical and certainly timelier. In this venue each City controls its own destiny and can proceed on its own time schedule to accomplish an agreement.

**Consequently, the EO's recommendation is that we (LAFCO) not accept any new applications until each city and the County have a Master Agreement.**

#### **CEQA REVIEW:**

From the perspective of an applicant, the CEQA process in and of itself is daunting, time consuming, costly and uncontrollable. The process is further complicated when multiple agencies are involved. It is even more difficult when two agencies do not agree on the impacts and mitigations or in some case on the quality of the document.

Because of these conditions, the IC LAFCO some 15 plus years ago established a policy that required all annexation applications to be processed by the City under a "co-lead" concept for CEQA review. In essence this allowed and encouraged the two staffs to work closely throughout the process in a parallel format from the beginning to the end. It also gave the applicants an appreciation of being included.

To date this process, although reluctantly accepted at first, has worked quite well, has saved time, aggravation and costs.

There are those that would argue the "co-lead" is not an approved process under CEQA law insofar as the statute provides definition for Lead, Responsible etc. but not CO-LEAD. The concept that we have established is an agreement between the City and LAFCO to process the CEQA portions of the project in a "partnership" manner whereby both agencies have some say in the outcome through this process versus one agency preparing a document and the other agency having to publicly comment as a Responsible Agency, often leading to acrimonious comments and opinions.

Therefore, the EO's recommendation is to continue with the "co-lead" concept on CEQA processing as it is a more civilized approach and certainly one that is more harmonious between agencies.

**GENERAL ANNEXATION PROCESS:**

The current process, but for the "tax sharing" portion has worked reasonably well for quite a few years.

Given however that:

- The tax sharing process has become somewhat lengthy and given that we (all) have not exactly followed the letter of the law, and
- The CEQA process, although working also has some issues and new people that are not familiar with our prior direction, and
- A lot of time has passed since LAFCO took a pro-active approach on how the annexation process was to work at ICLAFCO,

**It appears to be a good time to revisit the process and establish some direction that the Commission agrees with.**

**OPTION # 1:** Concurrent application processing:

Under this concept, LAFCO accepts an application concurrent with an application being submitted to the City for the land use entitlement review. LAFCO and the City complete the CEQA process on a partnership basis. The tax sharing portion of the process is left to the agencies to complete and ICLAFCO waits until all resolutions are submitted.

**OPTION # 2:** Tax Sharing process first.

ICLAFCO accepts an annexation application but issues a Notice of Filing and then waits until the Tax sharing resolution is received from the agencies before starting its review. The applicant is advised that there is a risk if we were to proceed and if the city worked on the land use entitlements until there is a tax sharing agreement.

**OPTION # 3:** Master tax sharing agreement

ICLAFCO only accepts an annexation if there is a master tax sharing agreement in place between the City and County for which an annexation is being proposed.

## EXECUTIVE OFFICERS RECOMMENDATION

The E.O. recommends the following:

- 1) Stop accepting and processing annexations for one or more cities until a Master Tax Sharing Agreement between that city and county is executed.
- 2) Require that all cities when starting the land use entitlement process for an annexation project coordinate the process with LAFCO whereby the City being the LEAD but LAFCO having input throughout the process.

## LAFCO Policy

**Note: All "cc" submittals are the Executive Officer's Report only. Attachments are generally too voluminous and are only supplied on CD. Information about the project may also be found on the LAFCO web page at [www.iclafco.com](http://www.iclafco.com).**

### **Attachments:**

Exhibit A: Revenue and Taxation Code Section 99

### **CC:**

City of Brawley, City Manager  
City of Calipatria, City Manager  
City of Calexico, City Manager  
City of El Centro, City Manager  
City of Holtville, City Manager  
City of Imperial, City Manager  
City of Westmorland, City Manager  
County of Imperial, Executive Office



**EXHIBIT A**  
**R&T Code Section 99**

**State of California**

**REVENUE AND TAXATION CODE**

**Section 99**

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99. (a) For the purposes of the computations required by this chapter:

(1) In the case of a jurisdictional change, other than a city incorporation, city disincorporation, or a formation of a district as defined in Section 2215, the auditor shall adjust the allocation of property tax revenue determined pursuant to Section 96 or 96.1, or the annual tax increment determined pursuant to Section 96.5, for local agencies whose service area or service responsibility would be altered by the jurisdictional change, as determined pursuant to subdivision (b) or (c).

(2) In the case of a city incorporation or disincorporation, the auditor shall assign the allocation of property tax revenues determined pursuant to Section 56810 of the Government Code and the adjustments in tax revenues that may occur pursuant to Section 56815 of the Government Code to the newly formed city or district and shall make the adjustment as determined by Section 56810 or 56813 in the allocation of property tax revenue determined pursuant to Section 96 or 96.1 for each local agency whose service area or service responsibilities would be altered by the incorporation.

(3) In the case of a formation of a district as defined in Section 2215, the auditor shall assign the allocation of property tax revenues determined pursuant to Section 56810 of the Government Code to the district and shall make the adjustment as determined by Section 56810, or for the disincorporated city or dissolved district as determined by Section 56813, in the allocation of property tax revenue determined pursuant to Section 96 or 96.1 for each local agency whose service area or service responsibilities would be altered by the change of organization.

(b) Upon the filing of an application or a resolution pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code), but prior to the issuance of a certificate of filing, the executive officer shall give notice of the filing to the assessor and auditor of each county within which the territory subject to the jurisdictional change is located. This notice shall specify each local agency whose service area or responsibility will be altered by the jurisdictional change.

(1) (A) The county assessor shall provide to the county auditor, within 30 days of the notice of filing, a report which identifies the assessed valuations for the territory subject to the jurisdictional change and the tax rate area or areas in which the territory exists.

(B) The auditor shall estimate the amount of property tax revenue generated within the territory that is the subject of the jurisdictional change during the current fiscal year.

(2) The auditor shall estimate what proportion of the property tax revenue determined pursuant to paragraph (1) is attributable to each local agency pursuant to Sections 96.1 and 96.5.

(3) Within 45 days of notice of the filing of an application or resolution, the auditor shall notify the governing body of each local agency whose service area or service responsibility will be altered by the jurisdictional change of the amount of, and allocation factors with respect to, property tax revenue estimated pursuant to paragraph (2) that is subject to a negotiated exchange.

(4) Upon receipt of the estimates pursuant to paragraph (3), the local agencies shall commence negotiations to determine the amount of property tax revenues to be exchanged between and among the local agencies. Except as otherwise provided, this negotiation period shall not exceed 60 days. If a local agency involved in these negotiations notifies the other local agencies, the county auditor, and the local agency formation commission in writing of its desire to extend the negotiating period, the negotiating period shall be 90 days.

The exchange may be limited to an exchange of property tax revenues from the annual tax increment generated in the area subject to the jurisdictional change and attributable to the local agencies whose service area or service responsibilities will be altered by the proposed jurisdictional change. The final exchange resolution shall specify how the annual tax increment shall be allocated in future years.

(5) In the event that a jurisdictional change would affect the service area or service responsibility of one or more special districts, the board of supervisors of the county or counties in which the districts are located shall, on behalf of the district or districts, negotiate any exchange of property tax revenues. Prior to entering into negotiation on behalf of a district for the exchange of property tax revenue, the board shall consult with the affected district. The consultation shall include, at a minimum, notification to each member and executive officer of the district board of the pending consultation and provision of adequate opportunity to comment on the negotiation.

(6) Notwithstanding any other provision of law, the executive officer shall not issue a certificate of filing pursuant to Section 56658 of the Government Code until the local agencies included in the property tax revenue exchange negotiation, within the negotiation period, present resolutions adopted by each such county and city whereby each county and city agrees to accept the exchange of property tax revenues.

(7) In the event that the commission modifies the proposal or its resolution of determination, any local agency whose service area or service responsibility would be altered by the proposed jurisdictional change may request, and the executive officer shall grant, 30 days for the affected agencies, pursuant to paragraph (4), to renegotiate an exchange of property tax revenues. Notwithstanding the time period specified in paragraph (4), if the resolutions required pursuant to paragraph (6) are not presented to the executive officer within the 30-day period, all proceedings of the jurisdictional change shall automatically be terminated.

(8) In the case of a jurisdictional change that consists of a city's qualified annexation of unincorporated territory, an exchange of property tax revenues between the city

and the county shall be determined in accordance with subdivision (e) if that exchange of revenues is not otherwise determined pursuant to either of the following:

(A) Negotiations completed within the applicable period or periods as prescribed by this subdivision.

(B) A master property tax exchange agreement among those local agencies, as described in subdivision (d).

For purposes of this paragraph, a qualified annexation of unincorporated territory means an annexation, as so described, for which an application or a resolution was filed on or after January 1, 1998, and on or before January 1, 2021.

(9) No later than the date on which the certificate of completion of the jurisdictional change is recorded with the county recorder, the executive officer shall notify the auditor or auditors of the exchange of property tax revenues and the auditor or auditors shall make the appropriate adjustments as provided in subdivision (a).

(c) Whenever a jurisdictional change is not required to be reviewed and approved by a local agency formation commission, the local agencies whose service area or service responsibilities would be altered by the proposed change, shall give notice to the State Board of Equalization and the assessor and auditor of each county within which the territory subject to the jurisdictional change is located. This notice shall specify each local agency whose service area or responsibility will be altered by the jurisdictional change and request the auditor and assessor to make the determinations required pursuant to paragraphs (1) and (2) of subdivision (b). Upon notification by the auditor of the amount of, and allocation factors with respect to, property tax subject to exchange, the local agencies, pursuant to the provisions of paragraphs (4) and (6) of subdivision (b), shall determine the amount of property tax revenues to be exchanged between and among the local agencies. Notwithstanding any other provision of law, no such jurisdictional change shall become effective until each county and city included in these negotiations agrees, by resolution, to accept the negotiated exchange of property tax revenues. The exchange may be limited to an exchange of property tax revenue from the annual tax increment generated in the area subject to the jurisdictional change and attributable to the local agencies whose service area or service responsibilities will be altered by the proposed jurisdictional change. The final exchange resolution shall specify how the annual tax increment shall be allocated in future years. Upon the adoption of the resolutions required pursuant to this section, the adopting agencies shall notify the auditor who shall make the appropriate adjustments as provided in subdivision (a). Adjustments in property tax allocations made as the result of a city or library district withdrawing from a county free library system pursuant to Section 19116 of the Education Code shall be made pursuant to Section 19116 of the Education Code, and this subdivision shall not apply.

(d) With respect to adjustments in the allocation of property taxes pursuant to this section, a county and any local agency or agencies within the county may develop and adopt a master property tax transfer agreement. The agreement may be revised from time to time by the parties subject to the agreement.

(e) (1) An exchange of property tax revenues that is required by paragraph (8) of subdivision (b) to be determined pursuant to this subdivision shall be determined in accordance with all of the following:

(A) The city and the county shall mutually select a third-party consultant to perform a comprehensive, independent fiscal analysis, funded in equal portions by the city and the county, that specifies estimates of all tax revenues that will be derived from the annexed territory and the costs of city and county services with respect to the annexed territory. The analysis shall be completed within a period not to exceed 30 days, and shall be based upon the general plan or adopted plans and policies of the annexing city and the intended uses for the annexed territory. If, upon the completion of the analysis period, no exchange of property tax revenues is agreed upon by the city and the county, subparagraph (B) shall apply.

(B) The city and the county shall mutually select a mediator, funded in equal portions by those agencies, to perform mediation for a period not to exceed 30 days. If, upon the completion of the mediation period, no exchange of property tax revenues is agreed upon by the city and the county, subparagraph (C) shall apply.

(C) The city and the county shall mutually select an arbitrator, funded in equal portions by those agencies, to conduct an advisory arbitration with the city and the county for a period not to exceed 30 days. At the conclusion of this arbitration period, the city and the county shall each present to the arbitrator its last and best offer with respect to the exchange of property tax revenues. The arbitrator shall select one of the offers and recommend that offer to the governing bodies of the city and the county. If the governing body of the city or the county rejects the recommended offer, it shall do so during a public hearing, and shall, at the conclusion of that hearing, make written findings of fact as to why the recommended offer was not accepted.

(2) Proceedings under this subdivision shall be concluded no more than 150 days after the auditor provides the notification pursuant to paragraph (3) of subdivision (b), unless one of the periods specified in this subdivision is extended by the mutual agreement of the city and the county. Notwithstanding any other provision of law, except for those conditions that are necessary to implement an exchange of property tax revenues determined pursuant to this subdivision, the local agency formation commission shall not impose any fiscal conditions upon a city's qualified annexation of unincorporated territory that is subject to this subdivision.

(f) Except as otherwise provided in subdivision (g), for the purpose of determining the amount of property tax to be allocated in the 1979–80 fiscal year and each fiscal year thereafter for those local agencies that were affected by a jurisdictional change which was filed with the State Board of Equalization after January 1, 1978, but on or before January 1, 1979. The local agencies shall determine by resolution the amount of property tax revenues to be exchanged between and among the affected agencies and notify the auditor of the determination.

(g) For the purpose of determining the amount of property tax to be allocated in the 1979–80 fiscal year and each fiscal year thereafter, for a city incorporation that was filed pursuant to Sections 54900 to 54904, inclusive, of the Government Code after January 1, 1978, but on or before January 1, 1979, the amount of property tax

revenue considered to have been received by the jurisdiction for the 1978–79 fiscal year shall be equal to two-thirds of the amount of property tax revenue projected in the final local agency formation commission staff report pertaining to the incorporation multiplied by the proportion that the total amount of property tax revenue received by all jurisdictions within the county for the 1978–79 fiscal year bears to the total amount of property tax revenue received by all jurisdictions within the county for the 1977–78 fiscal year. Except, however, in the event that the final commission report did not specify the amount of property tax revenue projected for that incorporation, the commission shall by October 10 determine pursuant to Section 54790.3 of the Government Code the amount of property tax to be transferred to the city.

The provisions of this subdivision shall also apply to the allocation of property taxes for the 1980–81 fiscal year and each fiscal year thereafter for incorporations approved by the voters in June 1979.

(h) For the purpose of the computations made pursuant to this section, in the case of a district formation that was filed pursuant to Sections 54900 to 54904, inclusive, of the Government Code after January 1, 1978, but before January 1, 1979, the amount of property tax to be allocated to the district for the 1979–80 fiscal year and each fiscal year thereafter shall be determined pursuant to Section 54790.3 of the Government Code.

(i) For the purposes of the computations required by this chapter, in the case of a jurisdictional change, other than a change requiring an adjustment by the auditor pursuant to subdivision (a), the auditor shall adjust the allocation of property tax revenue determined pursuant to Section 96 or 96.1 or its predecessor section, or the annual tax increment determined pursuant to Section 96.5 or its predecessor section, for each local school district, community college district, or county superintendent of schools whose service area or service responsibility would be altered by the jurisdictional change, as determined as follows:

(1) The governing body of each district, county superintendent of schools, or county whose service areas or service responsibilities would be altered by the change shall determine the amount of property tax revenues to be exchanged between and among the affected jurisdictions. This determination shall be adopted by each affected jurisdiction by resolution. For the purpose of negotiation, the county auditor shall furnish the parties and the county board of education with an estimate of the property tax revenue subject to negotiation.

(2) In the event that the affected jurisdictions are unable to agree, within 60 days after the effective date of the jurisdictional change, and if all the jurisdictions are wholly within one county, the county board of education shall, by resolution, determine the amount of property tax revenue to be exchanged. If the jurisdictions are in more than one county, the State Board of Education shall, by resolution, within 60 days after the effective date of the jurisdictional change, determine the amount of property tax to be exchanged.

(3) Upon adoption of any resolution pursuant to this subdivision, the adopting jurisdictions or State Board of Education shall notify the county auditor who shall make the appropriate adjustments as provided in subdivision (a).

(j) For purposes of subdivision (i), the annexation by a community college district of territory within a county not previously served by a community college district is an alteration of service area. The community college district and the county shall negotiate the amount, if any, of property tax revenues to be exchanged. In these negotiations, there shall be taken into consideration the amount of revenue received from the timber yield tax and forest reserve receipts by the community college district in the area not previously served. In no event shall the property tax revenue to be exchanged exceed the amount of property tax revenue collected prior to the annexation for the purposes of paying tuition expenses of residents enrolled in the community college district, adjusted each year by the percentage change in population and the percentage change in the cost of living, or per capita personal income, whichever is lower, less the amount of revenue received by the community college district in the annexed area from the timber yield tax and forest reserve receipts.

(k) At any time after a jurisdictional change is effective, any of the local agencies party to the agreement to exchange property tax revenue may renegotiate the agreement with respect to the current fiscal year or subsequent fiscal years, subject to approval by all local agencies affected by the renegotiation.

(Amended by Stats. 2015, Ch. 304, Sec. 22. (AB 851) Effective January 1, 2016.)