



County of Tuolumne Local Agency Formation Commission

Quincy Yaley, AICP
Executive Officer

September 6, 2022

Dave Anders
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RE: Tuolumne Community Services Project

Dear Mr. Anders,

Thank you for meeting with me on August 30 to discuss the above project. This correspondence is in response to the questions raised during our discussions with John Feriani.

During the meeting we discussed whether the project was to be classified as a "consolidation," or a "reorganization." Below are some details clarifying the differences between the LAFCO processes for each.

In a **consolidation** (GOV 56030), all agencies are dissolved, and a new agency is created in their place, with a service area that encompasses the previous districts' service areas. All of the agencies involved must file for consolidation, and the new agency becomes the successor entity. In a consolidation, there is a new district and new board, and the filing fee with the State Board of Equalization is zero. A consolidation may require a new Proposition 218 vote to ratify special taxes/benefits assessment.

In a **reorganization** (GOV 56073), one or more districts are dissolved and one agency annexes all or a portion of their former service areas. An existing agency is the successor entity. The application is initiated when one or more districts apply to dissolve; then, another applies to annex the service area of the dissolved district(s). Both agencies file simultaneously, and all assets/liabilities/revenues/expenses are transferred to the successor agency. A reorganization allows the application/extension of special (parcel) taxes over the annexed area without a Proposition 218 vote.

Active and Latent Powers

I reviewed the draft report you mentioned that outlined an option to have LAFCO approve a latent power that could be activated in the future. We discussed an example of snowplowing, and it was requested that the proposed new CSD be allowed to work with an entity—in this example, the County—to provide that service at some time in the future via negotiation, without having to come back to LAFCO for authorization.

To clarify, an authorized/active service requires that the district is authorized by LAFCO and State law to provide the service because this service is not currently provided by the district. Once granted, the district has the authorization it needs from the State and LAFCO to begin providing these services at their discretion.

"Latent service or power" (CKH 56050.5) is defined as those services, facilities, functions, or powers authorized by the principal act under which the district is formed, but that are not being

exercised, as determined by the commission pursuant to subdivision (i) of Section 56425.

There is actually no third option beyond active/authorized and latent powers. The activation of a latent power requires LAFCO approval, and can be provided by the district without further LAFCO oversight. LAFCO law does not allow an active power to be conditionally approved to allow two districts to work out an agreement in the future.

In the admin draft report, I see the recommendation regarding the lighting district as a modified alternative; however, after this draft was prepared, the Public Works Department informed LAFCO that the Rule 20A program cannot be transferred to the new district. Additionally, I confirmed with Counsel that the example of the conditional approval of the "snowplow" service we discussed in our meeting is not allowed.

As LAFCO law does not allow for the duplication of services, if the new district wanted to provide library services, snow removal, planning commission, and municipal advisory council services as indicated in the July 14, 2022 letter, LAFCO would need a plan for services as well as a tax revenue sharing agreement between the new district and the entity currently providing the service, who would be replaced by the new district.

Property Tax Negotiation

The property tax negotiation is governed by Revenue and Taxation Code §99. This section cannot be bypassed. There is no exemption for a situation where there is no exchange of tax revenue in R&TC §99(b)6. As requested, I have confirmed with Counsel that a tax sharing agreement is required, even if it is an agreement to the status quo.

Additionally, in the July 14 2022 letter, it was indicated that graffiti abatement was a requested active power in the LAFCO application. A tax sharing agreement will be needed for this service, as the service is currently performed by the County.

Conclusion

To continue processing the application, LAFCO needs clarification from the applicant on the following items:

- Is the application a consolidation or reorganization?
- What specific active powers are being requested by the applicant?
- Additional service plans are needed for services beyond wastewater treatment, parks and recreation, and community facilities.

Additionally, a tax revenue sharing agreement for any active/authorized powers, approved by the Board of Supervisors, is required. This process is overseen by the County Auditor and Assessor's office.

Please feel free to contact me if you need additional information or have any questions.

Sincerely,



Quincy Yaley
Executive Officer

cc: Anaiah Kirk, Board of Supervisors, Chair