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April 22, 2009 (Agenda)

Contra Costa Local Agency Formation Commission  
651 Pine Street, Sixth Floor  
Martinez, CA 94553

**Consolidations and Property Tax Allocation**

Dear Members of the Commission:

On April 8 2009, the Commission held a public hearing to consider the Fire and Emergency Medical Municipal Services Review (MSR). The hearing was continued to a special meeting on April 22, 2009.

The MSR identifies a number of governance structure and sphere of influence (SOI) options, including potential consolidations of districts.

During the hearing a question arose regarding the potential impact on property taxes in the event of a consolidation of unlike districts such as the Kensington Fire Protection District (KFPD) and the Kensington Community Services District (KCSO). The Commission requested that the LAFCO Legal Counsel respond to this question.

LAFCO Legal Counsel provides a preliminary conclusion that probably the property tax collected by the KFPD would be transferred to the KCSO, should those districts be combined. Further, that if the KCSO were to begin providing fire protection services after such a combination, its Board of Directors probably would have the authority to allocate those transferred revenues in its sole discretion. Restriction of the use of such revenues exclusively for fire protection purposes might be accomplished by the formation of a zone within the CSD or by special legislation.


A memo from LAFCO Legal Counsel will be provided at the meeting on April 22.

Sincerely,

**LOU ANN TEXEIRA**  
**EXECUTIVE OFFICER**

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*Date:* April 21, 2009  
*To:* Commissioners and Alternates,  
Contra Costa Local Agency Formation Commission  
*From:* Silvano B. Marchesi, Legal Counsel   
*Re:* Consolidations and Property Tax Allocation

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**SUMMARY:**

As a preliminary conclusion, it is my view that probably the property tax collected by the Kensington Fire Protection District would be transferred to the Kensington Community Services District, should those districts be combined. Further (also as a preliminary conclusion), if the Kensington Community Services District were to begin providing fire protection services after such a combination, its Board of Directors probably would have the authority to allocate those transferred revenues in its sole discretion. Restriction of the use of such revenues exclusively for fire protection purposes might be accomplished by the formation of a zone within the CSD or by special legislation.

**BACKGROUND AND DISCUSSION:**

At the meeting of April 8, 2009, the Commission requested an opinion regarding the impact on property taxes in the event that the Kensington Fire Protection District (KFPD) were to be combined with the Kensington Community Services District (KCSD). The limited time available has not been sufficient to conduct thorough research and reach a firm conclusion in time for the Commission's next meeting, but my preliminary opinion is provided.

For purposes of this discussion, the assumed scenario is that the KFPD would be dissolved and the KCSD would activate the latent power of providing fire protection services. Both actions would require approval by LAFCO.

The municipal services review the Commission is considering indicates that KFPD's share of the property tax collected within its boundaries is a gross 30%. (Table 3-10, p. 57) The percentage may vary by tax rate area within the District. The law governing the allocation of property tax

when jurisdictional changes occur is notoriously complex. (Rev. & Tax. Code, § 95 et seq.) After a cursory review, I have not found a provision that clearly appears to apply to this scenario. For example, the law generally provides that the auditor shall adjust the allocation of property tax revenue “as determined pursuant to subdivision (b) or (c).” (Rev. & Tax. Code, § 99(a)(1)) Subparagraph (c) does not apply here, because it covers a jurisdictional change that “is not required to be reviewed and approved by a [LAFCO].” As indicated above, both changes in our scenario require LAFCO’s approval.

During the meeting and in his subsequent letter, Mr. Bakker asserted that the Board of Supervisors would negotiate the allocation. That provision is found in subparagraph (b) of Section 99. However, that paragraph applies when “an application or resolution” is filed with LAFCO. (Rev. & Tax. Code, § 99(b)) The C-K-H contemplates that a resolution is submitted to LAFCO by a “local agency” (Gov. C., § 56653(a)), which is defined as a city, county, or district. (Gov. Code, § 56054) This definition excludes LAFCO itself. On the contrary, in our scenario the assumption is that the dissolution of the KFPD would be initiated by LAFCO, not by resolution of KFPD or by application of petitioners.

In short, I have not found, in the time available, a provision of the Revenue and Taxation Code or the C-K-H Act a provision that clearly governs the assumed scenario. I also consulted with other LAFCO legal counsel on the question, but no clear legal answer was forthcoming. Should the proposal advance, further research would be needed.

I have consulted with the County Auditor and with your Commission’s Executive Officer on this point, and they agree that in the past under similar circumstances (that is, consolidation of districts) the property tax has been transferred from the “losing” district to the “gaining” district.

Another question that arose during LAFCO’s meeting relates to the use of the property tax that is transferred by the KCSD. As indicated, with LAFCO approval the KCSD legally could exercise its latent power to provide fire protection services. (Gov. Code, § 61106(b)) Once the property tax revenue is transferred to the KCSD, there does not appear to be a limitation on the KCSD Board of Directors as to how it allocates those revenues. Like most if not all governing boards, the KCSD Board has broad power to adopt a budget. (Gov. Code, § 61110) My preliminary conclusion is that the KCSD Board could allocate the revenues transferred to it from the KFPD in its discretion, in the same way it is able to allocate its other revenues.

To the extent that there is a concern that the transferred property tax revenue could be excessively diverted to other, non-fire-protection uses, there may be two mechanisms that could diminish that concern. First, the Community Services District Law provides for the formation of

zones. (Gov. Code, § 61140) It may be possible to create a zone covering the entire district that would be dedicated exclusively for fire protection services. The transferred property tax allocation might be earmarked for that zone. It should be noted, however, that the creation of a zone is initiated by the CSD's Board of Directors. (Gov. Code, § 61140(a)) LAFCO does not play a role in the formation, change in boundaries, or dissolution of a CSD zone. (Gov. Code, § 61143)

Second, some CSDs have obtained legislation that pertains only to them, which contains special provisions that deviate from the provisions of the Community Services District Law. (Gov. Code, § 61105) For example, the Heritage Ranch Community Services District is authorized to acquire and operate petroleum storage tanks and sell its petroleum products to the public. (Gov. Code, § 61105(c)) Similar legislation could be sought that authorizes or requires the KCSD to use the transferred property tax revenues exclusively for fire protection services.

Further research would be required in order to determine whether either of these approaches could be legally feasible.

cc: Lou Ann Texeira, Executive Officer

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