August 24, 2021

The LAFCo Commission
El Dorado County (EDC) LAFCo
550 Main Street, Suite E
Placerville, CA 95667

Dear LAFCo Commissioners,

Upon reading the attached 7/28/21 letter (see Exhibit "A") addressed to Commissioner Powell, that was authored by Commissioners Thomas and Neau, and read into the public record as correspondance ("their Letter") during the July 28, 2021, EDC LAFCo Commission Meeting, I researched their disconnected legal facts, therein, and now offer findings with recommendations, openingly to you, as follows:

(1) Within the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (see Exhibit "B"), Section (Sec.) 56300(a) states that "It is the intent of the Legislature that each comission, not later than January 1, 2002, shall establish written policies and procedures and exercise its powers pursuant to this part in a manner consistant with those policies and procedures..." Thereon, the EDC LAFCo Policies and Guidelines (see Exhibit "C"), as adopted on 11/7/1988, are enabled by "Government Code" above.

(2) In "their Letter," the alledged breach of duties, by Commissioner Powell, are listed under Sec. 1.8.2.1, therein. However, in Sec. 1.8.3, the duty "to enforce the rules set forth" is assigned solely to the Presiding Officer; and, not to EDC LAFCo Commissioners Thomas and Neau, in "Government Code." On the afternoon of 7/28/21, the Presiding Officer, or Chairman Palmer, called me at home to say that "a letter was being sent to be read in public as part of the Commission Meeting correspondence that day, but he had not received a copy and did not know its contents, except for it being directed toward Public Comissioner Powell." Subsequently, Commissioner Palmer, or the Presiding Officer, resigned from the EDC LAFCo Commission on August 3, 2021, without performing, under Sec. 1.8.3.1, his duty. Thereby, "their Letter" can not be legally agendized for the September 22, 2021, Commission Meeting, as is now scheduled (see "A" again) to occur, in person, but not by ZOOM. To date, the Presiding Officer of the EDC LAFCo Commission still has not performed this due process step above. By publishing "their Letter" in public that usurped the duties of the Presiding Officer, Commissioners Thomas and Neau breached the Rules of Conduct in Office, specifically, in Sec. 1.8.2.1.3, which says Commissioners have a duty to "Abide by and defend all applicable laws and policies...," thereby, violating the "Government Code" above.

(3) In "their Letter, the "Government Code," in Sec. 56334, does say "Any member may be removed at any time and without cause by the body appointing that member...," in which the word "all" includes the County, City and District members, of the EDC LAFCo Commission, in addition to the Public member. Thereby, the EDC Board of Supervisors (BOS) appointing body can remove Commissioner Thomas without cause. Similarily, the Placerville City Council appointing body can remove Commissioner Neau without cause. As a consequence, anyone domiciled ether in EDC, or in Placerville, including members of the EDC BOS, or the Placerville City Council, can ask their appointing bodies, respectively, to consider the breach of duty, in Sec.1.8.2.1.3, by Commissioners Thomas and Neau, as is admitted by "their Letter."

(4) In "their Letter," Commissioners Thomas and Neau say that "This is a difficult letter to write, and yet, after several months of observation and careful thought...," thereby, attempting to elude the public of their violation of "Government Code." However, the facts show that these authors only became EDC LAFCo Commissioners in January, 2021, or just seven months ago, while not attending every scheduled meeting, thereafter. In comparison, the facts show that Commissioner Powell was appointed as Alternate Public Commissioner, in May, 2016, by an unanimous vote of the EDC LAFCo appointing body (see "C" again).

Then, in May, 2018, he was appointed as Public Commissioner, by a unanimous vote of the appointing body, again. Finally, from May, 2016, until July, 2021, Commissioner Powell attended all 60-months, or five-years, of sheduled EDC LAFCo Commission Meetings, except for two, without a single breach of duty being alleged, before "their Letter" was published, having only claims, but no related facts, therein.

(5) In "their Letter," the authors have demonstrated, thereon, a grossly negligent understanding of legal terms and the correct inter relationships among them. For example, in Sec. 1.3.6, the reasons are listed (see "C" again) for which a Commissioner can be "removed for cause," by acts of nonfeasance, misfeasance or malfeasance under "Government Code." In the alternative, in Sec. 1.8.3.1, the four remedial actions which are available to the Presiding Officer, as options, do not include the "removal without cause" of Commissioner. Finally, in Sec. 1.3.1, the procedure is outlined for the "appointment," but no procedure is outlined, therein, for the "removal" of the Public Commissioner. Therefore, with only a casual reading of "their Letter," one could conclude, by inducement of their mixed usage of removal "for cause and without cause," along with not having a "removal" procedure codified, that Commissioner Powell must be a criminal. As published,, "their Letter" could become the basis of a cause of action in defamation, by innuendo, for libel, due to the malicious misfeasance, as exemplified by "their Letter."

(6) In "their Letter," Commissioners Thomas and Neau make a request to the EDC LADCo Commission that their allegations of breached duties be added to the agenda of the next EDC LAFCo Commission Meeting. However, "their "Letter," by which they violated Sec.1.8.2.1.3 in "Government Code," can be agendized, elsewhere in EDC, instead. In California, the Grand Jury can investigate any activity by a public official which violates a state law, and many other activities, as long as they occur within the county of the Grand Jury. The rules governing the makeup, organization, powers and duties of the Grand Jury in California are found in California Penal Code Sec. 888-939. Therein, Sec. 919(c) of the Penal Code requires the Grand Jury to inquire into the willful or corupt misconduct in office of public officers of every discription within the county. The Grand Jury can initiate its oversight, by means of an internal or public complaint, including a direct complaint submtted by the EDC District Attorney.

(7) Therefore, please agendize this open 8/24/21 letter, along with "their Letter" as is attached to the Interim EO 7/29/21 email (see "A" again), for the, in person, September 22, 2021, Commission Meeting.

AVAILABLE PRESIDING OFFICER OPTIONS FOR THE EDC LAFCo COMMISSION

Today, two options are available to the Presiding Officer of EDC LAFCo Commission, as follows:

(i) Remove both items, in (7) above, from the agenda, as already announced (see "A" again) to only include "their Letter" for the, in person, September 22, 2021, EDC LAFCo Commission Meeting, Thereafter, the Presiding Officer can exercise the duty of due process, as set forth in Sec. 1.8.3, for a Voilation of Code of Conduct and Decorum Policy in "Government Code," instead, under the "Government Code" above.

(ii) Make "their Letter" public, again, by keeping it agendized for the September 22, 2021, Commission Meeting, thereby, re-publishing words in "their Letter," for a cause of action in defamation, by innuendo, for libel. Whereas, the July 28, 2021, EDC LAFCo Commission Meeting was "priviledged," by publishing the "Letter" as correspondence, a re-publishing of this libelous material, again, as an agenda item in the September, 2021, EDC LAFCo Commission Meetng may not be priviledged, instead. Finally, since "their Letter" was directed toward the Public Commissioner, then the public can be invited to observe the Presiding Officer, in person, at 5:30 PM on 9/22/21 in the BOS Meeting Room of Bldg. A, or on ZOOM.

Thank you, in advance, for allowing me to rebutt "their Letter," by submitting this open 8/24/21 letter, as correspondence, to be read publically, at the August 25, 2021, EDC LAFCo Commission Meeting.

Michael W, Powell, PhD, MBA, JD

EL DORADO
AUG 24 2021
LAFCO

July 28, 2021 LAFCO Correspondence

Erica Sanchez <ESanchez@edlafco.us>

Thu 7/29/2021 8:40 AM

Cc: Malathy Subramanian <Malathy.Subramanian@bbklaw.com>

1 attachments (121 KB)

21 July 28 Correspondence.pdf;

Commissioners,

Please see the attached correspondence, submitted yesterday and read into the record under Item 10D3. This item will be agendized for the September 22, 2021 meeting. (The regular August 25 meeting is still scheduled via Zoom.)

Please note, LAFCO is scheduled to return to in-person meetings beginning in September. We will meet in the Board of Supervisors hearing room in Building A at 330 Fair Lane, Placerville. Please confirm your availability on Wednesday, September 22 at 5:30 pm and reply to me only, if you will not be in attendance. Thank you.

Sincerely,
Erica

Erica Sanchez
Assistant Executive Officer
(530) 295-2707
esanchez@edlafco.us

El Dorado LAFCO
El Dorado Local Agency Formation Commission
550 Main Street, Suite E
Placerville, CA 95667
www.edlafco.us

WENDY THOMAS
JACKIE NEAU

July 28, 2021

LAFCO Commission
550 Main Street, Suite E
Placerville, California 95667

Dear LAFCO Commissioners,

As members of the El Dorado Local Area Formation Commission, it is our responsibility to ensure the implementation of the Cortese-Knox-Hertzberg Act. This Commission is comprised of seven regular members and four alternate members who each bring their own valuable perspective and experience to the board which is helpful in fulfilling the mission of El Dorado LAFCO. Diversity of opinion is a valuable tool, and we support and champion robust dialog and decision-making. To ensure that our process is productive and successful, it is our express duty as Commissioners to act and serve in the manner outlined in the approved Policies and Guidelines under which we operate. (https://www.edlafco.us/files/162615f75/El+Dorado+LAFCO+Policies+%26+Guidelines.pdf)

This is a difficult letter to write, and yet, after months of observation and careful thought, we respectfully ask the Commission to consider agendizing a discussion on the removal of Public Member Commissioner Powell. Government Code section 56334 provides that "Any member may be removed at any time and without cause by the body appointing that member", and yet, we would refer our fellow Commissioners to page 11 of our Policies and Guidelines. The Responsibilities of Commissioners clarifies the manner in which we are to carry out our duties, and we ask the Commissioners to specifically consider 1.8.1.4, 1.8.1.6 and 1.8.1.8.

El Dorado LAFCO is in a challenging position with a critical shortage of staff. We ask you to consider an agenda item to discuss this most unfortunate matter. As we work to recruit qualified personnel, it is our sacred obligation as Commissioners to safeguard a productive, efficient and supportive working environment, and this starts with leadership.

Respectfully,

Wendy Thomas — Jackie Neau

Wendy Thomas — Jackie Neau

Guide to the

CORTESE–KNOX–HERTZBERG LOCAL GOVERNMENT REORGANIZATION ACT OF 2000

Prepared by

Assembly Committee on Local Government
Honorable Cecilia M. Aguiar-Curry, Chair

November 2019

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California Legislature
Committee on Local Government

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COMMITTEE SECRETARY
DIXIE PETTY

November 12, 2019

To Interested Parties:

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Act) establishes procedures for local government changes of organization, including city incorporations, annexations to a city or special district, and city and special district consolidations.

Local agency formation commissions (LAFCOs) have numerous powers under the Act, but those of primary concern are the power to act on local agency boundary changes and to adopt spheres of influence for local agencies. Among the purposes of LAFCOs are the discouragement of urban sprawl and the encouragement of the orderly formation and development of local agencies.

Staff to the Assembly Local Government Committee regularly updates the *Guide to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000*. This version reflects the 2018 legislative changes to the Act. I hope that you find it to be a useful and helpful document.

Respectfully,

Cecilia M. Aguiar-Curry, Chair

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(g) Pursuant to subdivisions (d) and (f), if a landowner or landowners and registered voter or voters are the same individual or individuals, only one notice is required to be mailed.
(h) If the total number of notices required to be mailed in accordance with subdivisions (d) and (f) exceeds 1,000, then notice may instead be provided by publishing a display advertisement of at least one-eighth page in a newspaper, as specified in Section 56153, at least 21 days prior to the hearing.

Posted notice; place

56158. Notice required to be posted shall be posted on or near the doors of the meeting room of the legislative body or commission or upon any official bulletin board used for the purpose of posting public notices by, or pertaining to, the legislative body or commission.

Posted notice; time

56159. Posted notice shall remain posted for not less than five days. If the posted notice is notice of a hearing, posting shall be commenced at least 21 days prior to the date specified in the notice for hearing and shall continue to the time of the hearing.

Failure to receive notice; validity of action

56160. The failure of any person or entity to receive notice given pursuant to this division shall not constitute grounds for any court to invalidate any action taken for which the notice was given.

PART 2. LOCAL AGENCY FORMATION COMMISSION

CHAPTER 1. GENERAL

Written policies and procedures

56300. (a) It is the intent of the Legislature that each commission, not later than January 1, 2002, shall establish written policies and procedures and exercise its powers pursuant to this part in a manner consistent with those policies and procedures and that

Legislative intent

encourages and provides planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space and agricultural lands within those patterns.

Disclosure hearing

(b) Each commission with a proposal pending on January 1, 2001, shall, by March 31, 2001, hold a public hearing to discuss the adoption of policies and procedures to require the disclosure of contributions, expenditures, and independent expenditures authorized by Section 56100.1. Reporting requirements adopted pursuant to this section shall be effective upon the date of adoption or a later date specified in the resolution. Any commission that does not have a proposal pending on January 1, 2001, shall hold a public hearing to discuss the adoption of those policies and procedures within 90 days of submission of a proposal or at any time prior to submission of a proposal. Once a hearing has taken place under this subdivision, no subsequent hearing shall be

required except by petition of 100 or more registered voters residing in the county in which the commission is located.

Lobbying disclosure policies

(c) A commission may require, through the adoption of written policies and procedures, lobbying disclosure and reporting requirements for persons who attempt to influence pending decisions by commission members, staff, or consultants. Disclosure shall be made either to the commission's executive officer, in which case it shall be posted on the commission Web site, if applicable, or to the recorder, registrar of voters, or clerk of the board of supervisors of the county in which the commission is located. Each commission that on January 1, 2001, has a pending proposal, as defined in Section 56069 shall, by March 31, 2001, hold a public hearing to discuss the adoption of policies and procedures governing lobbying disclosure authorized by this subdivision. Reporting requirements adopted pursuant to this section shall be effective upon the date of adoption or on a later date specified in the resolution. Any commission that does not have a proposal pending on January 1, 2001, shall hold a public hearing to discuss the adoption of those policies and procedures within 90 days of submission of a proposal, or at any time prior to submission of a proposal.

(d) Any public hearings required by this section may be held concurrently.

Forms for submittals required

(e) The written policies and procedures adopted by the commission shall include forms to be used for various submittals to the commission including at a minimum a form for any protests to be filed with the commission concerning any proposed organization change.

Internet website required

(f) (1) On or before January 1, 2002, the commission shall establish and maintain, or otherwise provide access to notices and other commission information for the public through an Internet Website.

Electronic notice required

(2) The written policies and procedures adopted by the commission shall require that, to the extent that the commission maintains an Internet Web site, notice of all public hearings and commission meetings shall be made available in electronic format on that site.

Purposes of commission

56301. Among the purposes of a commission are discouraging urban sprawl, preserving open-space and prime agricultural lands, encouraging the efficient provision of government services, and encouraging the orderly formation and development of local agencies based upon local conditions and circumstances. One of the objects of the commission is to make studies and to obtain and furnish information which will contribute to the logical and reasonable development of local agencies in each county and to shape the development of local agencies so as to advantageously

provide for the present and future needs of each county and its communities. When the formation of a new government entity is proposed, a commission shall make a determination as to whether existing agencies can feasibly provide the needed service or services in a more efficient and accountable manner. If a new single-purpose agency is deemed necessary, the commission shall consider reorganization with other single-purpose agencies that provide related services.

Determination for new agencies

CHAPTER 2. FORMATION OF COMMISSION AND SELECTION OF COMMISSIONERS

Creation; composition

56325. There is hereby continued in existence in each county local agency formation commission. Except as otherwise provided in this chapter, the commission shall consist of members appointed as follows:

(a) Two appointed by the board of supervisors from their own membership. The board of supervisors shall appoint a third supervisor who shall be an alternate member of the commission. The alternate member may serve and vote in place of any supervisor on the commission who is absent or who disqualifies himself or herself from participating in a meeting of the commission.

If the office of a regular county member becomes vacant, the alternate member may serve and vote in place of the former regular county member until the appointment and qualification of a regular county member to fill the vacancy.

City members

(b) Two appointed by the cities in the county, each of whom shall be a mayor or council member, appointed by the city selection committee. The city selection committee shall also appoint one alternate member who shall also be a mayor or council member and shall be appointed and serve pursuant to Section 56335. The city selection committee is encouraged to appoint members to fairly represent the diversity of the cities in the county, with respect to population and geography.

District members

(c) Two presiding officers or members of legislative bodies of independent special districts appointed by the independent special district selection committee pursuant to Section 56332. The independent special district selection committee shall also appoint a presiding officer or member of the legislative body of an independent special district as an alternate member who shall be appointed and serve pursuant to Section 56332. The independent special district selection committee is encouraged to make appointments that fairly represent the diversity of the independent special districts in the county, with respect to population and geography.

Public member

(d) One representing the general public appointed by the other members of the commission. The other members of the commission may also appoint one alternate member who shall serve pursuant to Section 56331. Appointment of the public member and alternate public member shall be subject to the affirmative vote of at least one of the members appointed by each of the other appointing authorities. Whenever a vacancy occurs in the public member or alternate public member position, the commission shall cause a notice of vacancy to be posted as provided in Section 56158. A copy of this notice shall be sent to the clerk or secretary of the legislative body of each local agency within the county. Final appointment to fill the vacancy may not be made for at least 21 days after the posting of the notice.

Independent judgment of members

56325.1. While serving on the commission, all commission members shall exercise their independent judgment on behalf of the interests of residents, property owners, and the public as a whole in furthering the purposes of this division. Any member appointed on behalf of local governments shall represent the interests of the public as a whole and not solely the interests of the appointing authority. This section does not require the abstention of any member on any matter, nor does it create a right of action in any person.

Composition; Los Angeles County

56326. In Los Angeles County, the commission shall consist of nine members, appointed as follows:

(a) Two appointed by the board of supervisors from its own membership. The board of supervisors shall also appoint a third supervisor who shall be an alternate member of the commission. The alternate member may serve and vote in place of any supervisor on the commission who is absent or who disqualifies himself or herself from participating in a meeting of the commission.

If the office of the regular county member becomes vacant, the alternate member may serve and vote in place of the former regular county member until the appointment and qualification of a regular county member to fill the vacancy.

(b) One appointed by the board of supervisors, who shall not be a member of the board of supervisors but who shall be a resident of the San Fernando Valley Statistical Area, as defined in subdivision (c) of Section 11093. The board of supervisors shall also appoint an alternate member who shall not be a member of the board of supervisors but who is a resident of the San Fernando Valley Statistical Area. The alternate member may serve and vote in place of the member appointed pursuant to this subdivision if that member is absent or disqualifies himself or herself from participating in a meeting of the commission.

If the office of the regular member becomes vacant, the alternate member may serve and vote in place of the former regular member until the appointment and qualification of a regular member to fill the vacancy.

(c) Two appointed by the cities in the county, each of whom shall be a mayor or council member, appointed by the city selection committee. The city selection committee shall also appoint one alternate member who shall also by a mayor or council member and shall be appointed and serve pursuant to Section 56335. The city selection committee is encouraged to appoint members to fairly represent the diversity of the cities in the county, with respect to population and geography.

(d) One appointed by the presiding officer of the legislative body of a city in the county having a population in excess of 30 percent of the total population of the county who is a member of the legislative body of the city. The presiding officer of the legislative body shall also appoint an alternate member who is a member of the legislative body. The alternate member may serve and vote in place of the member appointed pursuant to this subdivision if the member is absent or disqualifies himself or herself from participating in a meeting of the commission.

If the office of the regular member becomes vacant, the alternate member may serve and vote in place of the former regular member until the appointment and qualification of a regular member to fill the vacancy.

(e) Two presiding officers or members of legislative bodies of independent special districts appointed by the independent special district selection committee pursuant to Section 56332. The independent special district selection committee shall also appoint one alternate member who shall be a presiding officer or member of the legislative body of an independent special district and shall be appointed and serve pursuant to Section 56332. The independent special district selection committee is encouraged to appoint members to fairly represent the diversity of the independent special districts in the county, with respect to population and geography.

(f) One representing the general public appointed by the other members of the commission. The other members of the commission may also appoint one alternate member who shall serve pursuant to Section 56331.

Composition; Sacramento County

56326.5. In Sacramento County, the commission shall consist of seven members, appointed as follows:

(a) Two appointed by the board of supervisors from their own membership. The board of supervisors shall appoint a third supervisor who shall serve as an alternate member of the commission. The alternate member may serve and vote in place of

any supervisor on the commission who is absent or who disqualifies himself or herself from participating in a meeting of the commission. If the office of the regular county member becomes vacant, the alternate member may serve and vote in place of the former regular county member until the appointment and qualification of a regular county member to fill the vacancy.

(b) One appointed by the City of Sacramento who is a member of the city council, appointed by the mayor and confirmed by the city council. The mayor shall also appoint, subject to confirmation by the council, an alternate member who is a member of the city council. The alternate member may serve and vote in place of the regular city member if the city member is absent or disqualifies himself or herself from participating in a meeting of the commission. If the office of the regular city member becomes vacant, the alternate member may serve and vote in place of the former regular city member until the appointment and qualification of a regular city member to fill the vacancy.

(c) One appointed by the cities in the county, who is a mayor or council member appointed by the city selection committee. The city selection committee shall also appoint one alternate member who shall also be a mayor or council member and shall be appointed and serve pursuant to Section 56335. The city selection committee is encouraged to appoint members to fairly represent the diversity of the cities in the county, with respect to population and geography.

(d) Two presiding officers or members of legislative bodies of independent special districts appointed by the independent special district selection committee pursuant to Section 56332. The independent special district selection committee shall also appoint one alternate member who shall be a presiding officer or member of the legislative body of an independent special district and shall be appointed and serve pursuant to Section 56332. The independent special district selection committee is encouraged to appoint members to fairly represent the diversity of the independent special districts in the county, with respect to population and geography.

(e) One representing the general public, appointed by the other six members of the commission. The commission may also appoint an alternate public member who may serve and vote in the place of the regular public member if the regular public member is absent or disqualifies himself or herself from participating in a meeting of the commission. If the office of the regular public member becomes vacant, the alternate member may serve and vote in place of the former regular public member until the appointment and qualification of a regular public member to fill the vacancy.

Composition; Santa Clara County

56327. In Santa Clara County, the commission shall consist of five members, appointed as follows:

(a) Two appointed by the board of supervisors from their own membership. The board of supervisors shall appoint a third supervisor who shall serve as an alternate member of the commission. The alternate member may serve and vote in place of any supervisor on the commission who is absent or who disqualifies himself or herself from participating in a meeting of the commission. If the office of the regular county member becomes vacant, the alternate member may serve and vote in place of the former regular county member until the appointment and qualification of a regular county member to fill the vacancy.

(b) One appointed by the city in the county having the largest population, who is a member of the legislative body of the city, appointed by the city council. The city council shall also appoint an alternate member who is a member of the legislative body of the city. The alternate member may serve and vote in place of the regular city member if the city member is absent or disqualifies himself or herself from participating in a meeting of the commission. If the office of the regular city member becomes vacant, the alternate member may serve and vote in place of the former regular city member until the appointment and qualification of a regular city member to fill the vacancy.

(c) One appointed by the cities in the county, who is a mayor or council member appointed by the city selection committee. The city selection committee shall also appoint one alternate member who shall also be a mayor of council member and shall be appointed and serve pursuant to Section 56335. The city selection committee is encouraged to appoint members to fairly represent the diversity of the cities in the county, with respect to population and geography.

(d) One representing the general public, appointed by the other four, or, if the commission is enlarged pursuant to Section 56327.3, the other six, members of the commission. This member shall not be a resident of a city which is already represented on the commission. The commission may also appoint an alternate public member, who shall not be a resident of a city represented on the commission, and who may serve and vote in the place of the regular public member if the regular public member is absent or disqualifies himself or herself from participating in a meeting of the commission. If the office of the regular public member becomes vacant, the alternate member may serve and vote in place of the former regular public member until the appointment and qualification of a regular public member to fill the vacancy.

Representation of special districts; Santa Clara County

56327.3. In Santa Clara County, the commission shall be enlarged by two members if, pursuant to the provisions of Chapter 5 (commencing with Section 56821), the commission orders representation of special districts upon the commission.

Composition; San Diego County

56328. (a) In San Diego County, the commission, which consists of seven members, augmented pursuant to Section 56332, shall be additionally augmented by the appointment of an eighth member and that member shall, notwithstanding subdivision (b) of Section 56325, be a member of the legislative body of the city in the county having the largest population, appointed by the legislative body of that city.

(b) The legislative body of the city shall appoint an alternate member at the same time and in the same manner as it appoints the regular member appointed pursuant to subdivision (a). If the regular city member is absent from a commission meeting, or disqualifies himself or herself from participating in a meeting, the alternate member may serve and vote in place of the regular city member for that meeting. If the office of the regular city member becomes vacant, the alternate member may serve and vote in place of the former regular city member until the appointment and qualification of a regular city member to fill the vacancy.

Composition; Kern County

56328.5. (a) In Kern County, the commission, which consists of seven members, augmented pursuant to Section 56332, shall be additionally augmented by the appointment of an eighth member and a ninth member.

(b) The eighth member shall, notwithstanding subdivision (b) of Section 56325, be a member of the legislative body of the city in the county having the largest population, appointed by the legislative body of that city.

The legislative body of the city shall appoint an alternate member at the same time and in the same manner as it appoints the eighth regular member. If the regular city member is absent from a commission meeting, or disqualifies himself or herself from participating in a meeting, the alternate member may serve and vote in place of the regular city member for that meeting. If the office of the regular city member becomes vacant, the alternate member may serve and vote in place of the former regular city member until the appointment and qualification of a regular city member to fill the vacancy.

(c) The ninth member shall represent the general public, but shall not be a member of the governing body of any local agency. The ninth member shall be appointed by the four members of the commission appointed by the county supervisors and the independent special district selection committee. Those commission members may also appoint an alternate public

member, who is not a member of the governing body of any local agency, who may serve and vote in the place of the regular public member appointed pursuant to this subdivision if that regular public member is absent or disqualifies himself or herself from participating in a meeting of the commission. If the office of the regular public member appointed pursuant to this subdivision becomes vacant, the alternate member may serve and vote in place of that former regular public member until the appointment and qualification of a regular public member pursuant to this subdivision to fill the vacancy.

Composition; counties with no cities

56329. If there is no city in the county, the commission shall consist of five members, appointed as follows which may be further augmented pursuant to Sections 56332 and 56332.5:
(a) Three appointed by the board of supervisors from their own membership. The board of supervisors shall appoint a fourth supervisor who is an alternate member of the commission. The alternate member may serve and vote in place of any supervisor on the commission who is absent or who disqualifies himself or herself from participating in a meeting of the commission.
If the office of a regular county member becomes vacant, the alternate member may serve and vote in place of the former regular county member until the appointment and qualification of a regular county member to fill the vacancy.
(b) Two representing the general public appointed by the other three members of the commission. Appointment of the public member and alternate public member shall be subject to the affirmative vote of at least one of the members selected by each of the other appointing authorities.

Alternate public members; appointment, duties

56331. When appointing a public member pursuant to Sections 56325, 56326, 56326.5, 56327, 56328, 56328.5, and 56329, the commission may also appoint one alternate public member who may serve and vote in place of a regular public member who is absent or who disqualifies himself or herself from participating in a meeting of the commission. The public member and the alternate public member shall be residents of the county of the appointing commission.

If the office of a regular public member becomes vacant, the alternate member may serve and vote in place of the former regular public member until the appointment and qualification of a regular public member to fill the vacancy.

Public member restrictions

No person appointed as a public member or alternate public member pursuant to this chapter shall be an officer or employee of the county or any city or district with territory in the county,

provided, however, that any officer or employee serving on January 1, 1994, may complete the term for which he or she was appointed.

Alternative member; one vote

56331.3. If two or more members are absent or disqualify themselves from participating in a meeting of the commission, any alternate member who is authorized to serve and vote in the place of a member shall only have one vote.

Independent special district selection committee

56332. (a) The independent special district selection committee shall consist of the presiding officer of the legislative body of each independent special district. However, if the presiding officer of an independent special district is unable to participate in a meeting or election of the independent special district selection committee, the legislative body of the district may appoint one of its members as an alternate to participate in the selection committee in the presiding officer's place. Those districts shall include districts located wholly within the county and those containing territory within the county representing 50 percent or more of the assessed value of taxable property of the district, as shown on the last equalized county assessment roll. Each member of the committee shall be entitled to one vote for each independent special district of which he or she is the presiding officer or his or her alternate as designated by the governing body. Members representing a majority of the eligible districts shall constitute a quorum.

Meetings

(b) The executive officer shall call and give written notice of all meetings of the members of the selection committee. A meeting shall be called and held under one of the following circumstances:

Anticipated vacancy

(1) Whenever the executive officer anticipates that a vacancy will occur within the next 90 days among the members or alternate member representing independent special districts on the commission.

(2) Whenever a vacancy exists among the members or alternate member representing independent special districts upon the commission.

(3) Upon receipt of a written request by one or more members of the selection committee representing districts having 10 percent or more of the assessed value of taxable property within the county, as shown on the last equalized county assessment roll.

(4) Upon the adoption of a resolution of intention pursuant to Section 56332.5.

(5) Upon receipt of a written request by one or more members of the selection committee notifying the executive officer of the need to appoint a member representing independent special districts on an oversight board pursuant to paragraph (3) of subdivision (j) of Section 34179 of the Health and Safety Code.

Appointment of special district members

(c) The selection committee shall appoint two regular members and one alternate member to the commission. The members so

appointed shall be elected or appointed members of the legislative body of an independent special district residing within the county but shall not be members of the legislative body of a city or

District member disqualification

county. If one of the regular district members is absent from a commission meeting or disqualifies himself or herself from participating in a meeting, the alternate district member may serve and vote in place of the regular district member for that meeting. Service on the commission by a regular district member shall not disqualify, or be cause for disqualification of, the member from acting on proposals affecting the special district on whose legislative body the member serves. The special district selection committee may, at the time it appoints a member or alternate, provide that the member or alternate is disqualified from voting on proposals affecting the district on whose legislative body the member serves.

Call for nominations

(1) The executive officer may prepare and deliver a call for nominations to each eligible district. The presiding officer, or his or her alternate as designated by the governing body, may respond in writing by the date specified in the call for nominations, which date shall be at least 30 days from the date on which the executive officer mailed the call for nominations to the eligible district.

(2) At the end of the nominating period, if only one candidate is nominated for a vacant seat, that candidate shall be deemed appointed. This paragraph shall be operative only if the written notice of the meeting provided pursuant to subdivision (b) discloses that, if nominations are received for only one candidate by the end of the nominating period, the candidate shall be deemed appointed and the meeting may be cancelled.

(d) If the office of a regular district member becomes vacant, the alternate member may serve and vote in place of the former regular district member until the appointment and qualification of a regular district member to fill the vacancy.

Elections by mailed ballot

(e) A majority of the independent special district selection committee may determine to conduct the committee's business by mail, including holding all elections by mailed ballot, pursuant to subdivision (f).

(f) If the independent special district selection committee has determined to conduct the committee's business by mail or if the executive officer determines that a meeting of the special district selection committee is not feasible, the executive officer shall conduct the business of the committee by mail. Elections by mail shall be conducted as provided in this subdivision.

(1) The executive officer shall prepare and deliver a call for nominations to each eligible district. The presiding officer, or his or her alternate as designated by the governing body, may respond in writing by the date specified in the call for nominations, which date shall be at least 30 days from the date on which the executive officer mailed the call for nominations to the eligible district.

(2) At the end of the nominating period, if only one candidate is nominated for a vacant seat, that candidate shall be deemed appointed. If two or more candidates are nominated, the executive officer shall prepare and deliver one ballot and voting instructions to each eligible district. The ballot shall include the names of all nominees and the office for which each was nominated. Each presiding officer, or his or her alternate as designated by the governing body, shall return the ballot to the executive officer by the date specified in the voting instructions, which date shall be at least 30 days from the date on which the executive officer mailed the ballot to the eligible district.

Ballot and voting instructions

(3) The call for nominations, ballots, and voting instructions shall be delivered by certified mail to each eligible district. As an alternative to the delivery by certified mail, the executive officer may transmit materials by electronic mail. All notices and election materials shall be addressed to the presiding officer, care of the clerk of the district.

(4) Nominations and ballots may be returned to the executive officer by electronic mail.

(5) Each returned nomination and ballot shall be signed by the presiding officer or his or her alternate as designated by the governing body of the eligible district.

Quorum

(6) For an election to be valid, at least a quorum of the special districts must submit valid ballots. The candidate receiving the most votes shall be elected, unless another procedure has been adopted by the selection committee. Any nomination and ballot received by the executive officer after the date specified is invalid, provided, however, that if a quorum of ballots is not received by that date, the executive officer shall extend the date to submit ballots by 60 days and notify all districts of the extension. If ballots from a quorum of the districts have not been received at the end of the 60-day extension period, the executive officer shall extend the period to return ballots for a length of time at his or her discretion until a quorum is achieved, unless another procedure has been adopted by the selection committee. The executive officer shall announce the results of the election within seven days of the date specified.

(7) For a vote on special district representation to be valid, at least a quorum of the special districts must submit valid ballots to the executive officer by the date specified in the voting instructions, which date shall be at least 30 days from the date on which the executive officer mailed the ballot to the eligible district. If ballots from a quorum of the districts have not been received at the end of the 60-day extension period, the executive officer shall extend the period to return ballots for a length of time at his or her discretion until a quorum is achieved, unless another procedure has been adopted by the selection committee. By a majority vote of those district representatives voting on the issue,

the selection committee shall either accept or deny representation. The executive officer shall announce the results of the election within seven days of the date specified.

(8) All election materials shall be retained by the executive officer for a period of at least six months after the announcement of the election results.

"Executive officer"

(g) For purposes of this section, "executive officer" means the executive officer or designee as authorized by the commission.

Representation of independent special districts

56332.5. (a) If the commission does not have representation from independent special districts on or before January 1, 2001, the commission shall initiate proceedings for representation of independent special districts upon the commission if either of the following occur:

Proceedings

(1) Upon receipt of a written request by one or more members of the selection commission representing districts having 10 percent or more of the assessed values of taxable property within the county, as shown on the last equalized county assessment roll.

(2) Upon adoption of a resolution by the commission proposing representation of special districts upon the commission.

Meeting

(b) The commission, at its next regular meeting, shall adopt a resolution of intention. The resolution of intention shall state whether the proceedings are initiated by the commission or by an independent special district or districts, in which case, the names of those districts shall be set forth. The commission shall order the executive officer to call and give notice of a meeting of the independent special district selection committee to be held within 15 days after the adoption of the resolution in order to determine whether independent special districts shall accept representation on the commission and appoint independent special district representation pursuant to Section 56332.

Appointment of public member when commission includes special district representation

56333. When a commission is enlarged to seven members as provided in Section 56332, the public members appointed pursuant to Sections 56325 and 56329 shall thereafter be appointed by members of the commission representing cities, counties, and special districts. Those appointments shall be made at the times and in the manner provided in Section 56334.

Terms of commissioners

56334. The term of office of each member shall be four years and until the appointment and qualification of his or her successor. Upon enlargement of the commission by two members, as provided in Section 56332, the new members first appointed to represent independent special districts shall classify themselves by lot so that the expiration date of the term of office of one new member coincides with the existing member who holds the office represented by the original two-year term on the commission and

the term of office of the other new member coincides with the existing member who holds the office represented by the original four-year term on the commission. The body which originally appointed a member whose term has expired shall appoint his or her successor for a full term of four years.

Removal from commission

Any member may be removed at any time and without cause by the body appointing that member.

The expiration date of the term of office of each member shall be the first Monday in May in the year in which the term of the member expires, unless procedures adopted by the commission specify an alternate date to apply uniformly to all members. However, the length of a term of office shall not be extended more than once.

Vacancies

Any vacancy in the membership of the commission shall be filled for the unexpired term by appointment by the body which originally appointed the member whose office has become vacant.

Chairperson

The chairperson of the commission shall be selected by the members of the commission.

Reimbursement of expenses; per diem

Commission members and alternates shall be reimbursed for the actual amount of their reasonable and necessary expenses incurred in attending meetings and in performing the duties of their office. The commission may authorize payment of a per diem to commission members and alternates for each day while they are in attendance at meetings of the commission.

City selection committee

56335. In each county containing two or more cities, regular and alternate city members to the commission shall be appointed by the city selection committee organized in the county pursuant to and in the manner provided in Article 11 (commencing with Section 50270) of Chapter 1 of Part 1 of Division 1. Regular members of the commission shall be appointed by the city selection committee pursuant to Sections 56325, 56326, and 56327.

The city selection committee shall appoint one alternate member to the commission in the same manner as it appoints a regular member. If one of the regular city members is absent from a commission meeting, or disqualifies himself or herself from participating in a meeting, the alternate member may serve and vote in place of that regular city member for that meeting.

Except in the case of a member appointed pursuant to subdivision (d) of Section 56326 or subdivision (b) of Section 56327, a city selection committee, may, at the time it appoints a member or alternate, provide that the member or alternate is disqualified from voting on proposals affecting the city which the member or alternate represents.

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

POLICIES

AND

GUIDELINES

Adopted
November 7, 1988

Revised

September 6, 1990, February 1, 1996, December 5, 1996, November 5, 1998, July 1, 1999, July 1, 2001, December 5, 2002, March 26, 2003, May 28, 2003, January 28, 2004, February 25, 2004, October 26, 2005, March 22, 2006 January 24, 2007, February 28, 2007, May 23, 2007, September 26, 2007, December 5, 2007, January 8, 2008, June 25, 2008, December 17, 2008, April 22, 2009, June 24, 2009, July 22, 2009, February 24, 2010, March 24, 2010, April 28, 2010, May 26, 2010, March 23, 2011, February 26, 2014, March 26, 2014, May 28, 2014, January 28, 2015, March 25, 2015, August 26, 2015, December 7, 2016, June 28, 2017, December 6, 2017, January 24, 2018, March 28, 2018, May 23, 2018, August 22, 2018, February 27, 2019, April 24, 2019

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1.3 MEMBERSHIP

1.3.1 **Membership:** El Dorado LAFCO shall be composed of seven regular members and four alternate members (§56325, §56332). All members must be residents of El Dorado County.

1) County: Two members and one alternate from the County Board of Supervisors are selected by that Board (§56325).

2) City: Two City Council Members and one alternate are designated by the City Selection Committee (§56325).

3) Special Districts: Two members from the Special Districts and one alternate are selected by the Special Districts Selection Committee (§56332).

4) Public Member: The Public Member and one alternate Public Member are appointed by the other six Commissioners (§56325(d)) in the following manner:

Application Process *(Approved July 24, 2002)*

(a) The vacancy shall be posted by the Clerk of the LAFCO Commission within 20 days after the vacancy occurs (§54974). At the same time notice shall be published in a newspaper of general circulation and mailed to all cities, the Board of Supervisors, all independent districts, and any member of the public who has requested such notice in writing.

(b) The application period will run 30 days from the date of posting. Applications with attached resumes shall be submitted to the LAFCO Clerk within 30 days of the date posted.

(c) If four or fewer applicants apply for the position, the full Commission shall interview the applicants at the next regularly scheduled LAFCO meeting for which notice can be given. All applicants are expected to attend interview sessions.

If five or more applicants apply for the position, the Executive Officer shall transmit the application materials for all of the candidates to the six regular Commissioners. Each Commissioner shall independently select three candidates he or she wants to invite to the interview and independently notify the Executive Officer accordingly. The Executive Officer will tally all of the invitations. The interview process shall proceed according to one of the following two manners:

i. The four applicants who receive at least two Commissioner invitations shall be interviewed by the full Commission at the next regularly scheduled LAFCO meeting for which notice can be given; or

ii. If more than four candidates receive at least two Commissioner invitations, the four candidates who received the most invitations shall be interviewed by the full Commission at the next regularly scheduled LAFCO meeting for which notice can be given.

All applicants are expected to attend interview sessions.

Selection Process

(a) Selection of the public member and alternate public member shall be subject to the affirmative votes of at least one City, County, and District member seated on LAFCO [§56325(d)].

(b) A written ballot containing the names of all qualified applicants and the names of each Commissioner will be distributed to all voting members of the Commission. The applicant receiving four (4) or more votes in the correct categories shall be appointed.

(c) In the event of a tie vote, or if one candidate does not receive a majority vote from the Commission, a runoff vote or votes will be conducted.

Results of each ballot will be a matter of public record and be available to the public upon request under the Brown Act and Public Records Act. Ballots will be retained for a period of six (6) months.

(d) If the alternate public member is selected as the new regular public member, the Commission has the discretion to fill the newly created vacancy in the alternate public member position by appointing someone from the pool of applicants who applied for the regular public member vacancy.

1.3.2 **Alternate Commissioners:** Alternate Commissioners are encouraged to take an active role in El Dorado LAFCO business including discussions and deliberations on project proposals, CALAFCO legislative activities and training workshops, interagency coordination and communication, and participation in policy development and other working groups.

Alternate members may vote in place of the regular member who is absent or who disqualifies himself or herself from participating in an action (§56325). However, Alternate Commissioners, when not acting in the absence of a regular member, do not generally participate in closed sessions. The Commission, under the advice of the Executive Officer and Counsel, may invite the participation of Alternates in closed sessions on a case-by-case basis.

1.3.3 **Term of Office:** The term of each member shall be four years. Commissioners serve until the appointment and qualification of a successor or until removed by the appointing body (§56334). A Commissioner is required to vacate their seat if he or she ceases to be an officer of a city, county or district during his or her term (§56337). Terms begin on the first Monday of May (Approved January 24, 2002, February 28, 2007).

1.3.4 **New Members:** New Commissioners joining El Dorado LAFCO shall meet with the Executive Officer for an orientation to the agency within 45 days of assuming office. New Commissioners are encouraged to attend courses or programs about the functions and responsibilities of LAFCO, particularly CALAFCO sessions, within their first year of service to LAFCO.

1.3.5 **Member Requirements:** Each Commissioner and Alternate shall sign the Code of Ethics adopted by El Dorado LAFCO and adhere to its standards and precepts. The signed code of ethics shall be filed with LAFCO.

1.3.6 **Removal of Members:** The Commission may recommend to the appointing authority that a member be removed for the following reasons:

(a) The absence of that member from three consecutive meetings or more than half the meetings in any 12 month period.

(b) Malfeasance of office or dereliction of duty by that member.

(c) Refusal to sign and comply with the LAFCO Code of Ethics (Appendix "X").

(d) Failure to complete required financial disclosure documents in a timely manner.

1.3.7 **Member Responsibility:** All Commission members shall exercise their independent judgment on behalf of the interests of residents, property owners, and the public as a whole. Any member appointed on behalf of local governments shall represent the interests of the public as a whole and not solely the interests of the appointing authority (§56325.1).

1.3.8 **Speaking in Public:** All Commissioners, when speaking in public forums of any kind, must clearly state that they are expressing their own views, unless they have been designated to be the spokesperson on that matter and to represent the Commission.

1.8 RESPONSIBILITIES OF COMMISSIONERS

1.8.1 Each member of the El Dorado LAFCO has a duty to:

1.8.1.1 Diligently prepare for meetings by understanding the background, purpose, and arguments for and against items of business before a meeting.

1.8.1.2 Seek background information about agenda items and operational matters by contacting the LAFCO's Executive Officer prior to the Board Meeting.

1.8.1.3 Respect confidences and information designated as "confidential." Do not disclose information received during a Closed Session of the LAFCO Board held pursuant to state law.

1.8.1.4 Treat everyone with respect by actively listening to other viewpoints, and not interrupting, ignoring, or belittling the contributions of others. Members of the Commission will use professional language.

1.8.1.5 State views briefly and clearly during LAFCO Board and Committee meetings. Refrain from discussing non-agenda items.

1.8.1.6 Refrain from abusive conduct, personal charges, or verbal attacks upon the character, motives, ethics, morals, or comments of other Commissioners, staff, or the public.

1.8.1.7 Make impartial decisions in the best interest of the public, free of narrow political interest, financial, and other personal interests that impair independence of judgment or action, and are consistent with, but not limited to, the requirements of the Political Reform Act and other state and local laws.

1.8.1.8 Recognize and accept legitimate differences of opinion. Act with integrity in accepting, supporting, and defending LAFCO. Once the Commission takes action, all Commissioners should respect the decision of LAFCO and not create barriers to the implementation of said action. The dissenting Commissioner(s) should acknowledge the decision of the Board and current position of LAFCO.

1.8.1.9 Provide fair and equal treatment of all persons and matters coming before the Commission.

1.8.2 **Rules of Conduct in Office**

1.8.2.1 Each member of the El Dorado Local Agency Formation Commission has a duty to:

1.8.2.1.1 Support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; bear true faith and allegiance to the Constitutions of the United States and the State of California; and well and faithfully discharge the duties of the office.

1.8.2.1.2 Commissioners will strive to work in cooperation with other public officials unless prohibited from so doing by law or officially-recognized confidentiality of their work.

1.8.2.1.3 Abide by and defend all applicable laws and policies, especially the political campaign, lobbying, and conflict of interest laws enforced by the Fair Political Practices Commission, state laws, and the El Dorado LAFCO's Policies and Guidelines.

1.8.2.1.4 Safeguard LAFCO's ability to make independent, objective, fair and impartial judgments by scrupulously avoiding financial and social relationships and transactions that may compromise, or give the appearance of compromising objectivity, independence, and honesty.

1.8.2.1.5 Carefully consider if exceeding or appearing to exceed authority of office for personal or financial gain. When in doubt, avoid actions that create, in the mind of a reasonable observer, the appearance of impropriety, ethical lapses, legal violations, or actions inconsistent with this Policy.

1.8.2.1.6 Refrain from making unauthorized commitments or promises of any kind purporting to bind LAFCO.

1.8.2.1.7 Refrain from using status as a public office holder to influence the outcome of a community meeting. When attending as a citizen, indicate when expressing personal opinions, and refer questions related to LAFCO policies to LAFCO's Executive Officer.

1.8.2.1.8 Utilize LAFCO resources, including but not limited to, equipment, supplies, staff time, telephones, computers, and fax machines in a manner consistent with LAFCO policies and state laws.

1.8.2.1.9 Correspondence paid for with public funds or on agency stationery must relate to bona fide LAFCO business and must not purport to advance or advocate a policy not previously approved by the Commission as a whole. No individual Commissioner shall create or transmit any LAFCO correspondence without authorization from LAFCO to serve as spokesperson for this purpose. When otherwise signing correspondence using their title as Commissioner and presenting their individual opinions and positions, Commissioners shall explicitly state they do not represent LAFCO and will not allow the inference that they do. The following disclaimer shall be used on personal communication: *"This correspondence and any documents attached hereto, reflects the individual opinions and positions of the above-named Director and does not represent the opinions or positions of LAFCO's Board of Directors or LAFCO. Pursuant to Section 1.8.1-1.8.1.9 of the LAFCO Policies and Guidelines, individual Commissioners, except as otherwise authorized by LAFCO, shall have no power to act for LAFCO or its Commissioners."*

1.8.3 Violation of Code of Conduct and Decorum Policy

1.8.3.1 Presiding Officer. The presiding officer shall request that a person who is breaching the rules of decorum be orderly and comply with this Policy. After receiving a warning from the presiding officer, the presiding officer may agendize an item for the next LAFCO meeting to discuss the conduct and have the Commission determine if the conduct is in violation of this Policy. If a super-majority of the Commission determines the conduct was in violation of this Policy, the Commission's super-majority may impose any of the following remedial actions:

(a) Issue a letter of warning from the Commission;

(b) Adopt a resolution expressing disapproval of the conduct of the Commissioner and censure by the Commission;

(c) Remove the Commissioner from their position on any LAFCO committees;

(d) Deny or reduce payment of stipend and/or expense reimbursement for meetings of outside organizations, if applicable; or

(e) Deny or reduce payment of stipend and/or expense reimbursement for the LAFCO meetings at which the violations(s) occurred.

1.8.3.2 Motion to Enforce. If the presiding officer of the Commission fails to enforce the rules set forth above, any Commissioner may move to require the presiding officer to do so, and an affirmative vote of a super-majority of the Commission shall require him or her to do so. If the presiding officer of the Commission fails to carry out the will of a super-majority of the Commission, the super-majority may designate another member of the Commission to act as presiding officer for the limited purpose of enforcing any rule of this Policy it wishes be enforced.