

Brett S. Jolley
bjolley@mcjglaw.com

June 11, 2025

Hon. Minnie Diallo, Chair
San Joaquin Local Agency Formation Commission
C/O J.D. Hightower, Executive Officer
5000 S. Airport Way, Suite 209
Stockton, CA 95206
Email: jhightower@sjgov.org

Re: **3586 Arch Road Reorganization: June 12, 2025 LAFCO Agenda Item No. 3**
Montezuma Fire Protection District's Comments on Reorganization
Application Scheduled for Hearing

Dear Chair Diallo and Commissioners,

This office represents Montezuma Fire Protection District ("District"), a local agency providing fire protection services to the property located at 3568 Arch Road (APN 181-120-01, hereafter the "Project Site") in unincorporated San Joaquin County ("County"). Project Site property-owner LGRE Capital, LLC, ("LGRE") seeks to annex this parcel into the City of Stockton ("City") and detach the Property from the District for development as a fuel station/mini mart ("Project").

Introduction

The District supports the Project and its annexation to the City of Stockton. At the same time, due to a material failure to comply with Section 99 of the California Revenue and Taxation Code regarding the City's obligation to negotiate and reach agreement on tax sharing with the District prior to hearing, detachment from the District cannot be approved at this time as a matter of law.

But rather than hold the entire reorganization application back while the City undertakes compliance with Section 99(b), and rather than adopt proposed Condition 7 which violates Section 99(b) (and is also opposed by LGRE), the District urges the Commission, should it believe it has authority to do so, to take the following action:

1. Bifurcate (aka "amend") approval of the application to allow annexation only to proceed immediately;

Attachment 10

Hon. Minnie Diallo

June 11, 2025

Page 2

2. Amend the Certificate of Filing to apply only to the annexation components of the application; and
3. Order the detachment component of the application to proceed through the mandatory tax-sharing negotiation process required by Section 99(b) before a Certificate of Filing is issued for detachment.

Proceeding in this manner would allow LGRE to begin construction of its long-delayed Project while enabling the City to begin to collecting its share of permit fees, property taxes, and sales tax revenues from the Project, while at the same time effectively complying with §99(b) and ensuring that any detachment that may be approved equitably provides the District with its fair share of property tax revenue following detachment.

On the other hand, approving the detachment portion of the application without *first* requiring the City and District (as represented by the County), to timely present resolutions adopted by each agency agreeing to a negotiated exchange of property tax revenues, amounts to a prejudicial abuse of discretion as defined by Gov't. C. § 56107(c) and *Tracy Rural Cnty. Fire Prot. Dist. v. Loc. Agency Formation Com. of San Joaquin Cnty.*, (2022) 84 Cal. App. 5th 91, 111 (“unless San Joaquin LAFCO can point to specific statutory authority for such an action, [approval] exceeded its authority”) and results in reversible error subject to judicial review.

Discussion

A. The Section 99 Negotiation Process

Upon receiving an application for any type of reorganization, and before issuing a Certificate of Filing, LAFCo must provide notice of the filing to the County Assessor and Auditor. (Rev. & Tax. C. § 99(b).) The Assessor then identifies the assessed value for the subject property and the Auditor estimates the amount of property tax revenue generated from that property (Rev. & Tax. C. § 99(b)(1)(A) and (B).)

Within 45 days after the notice of filing, the Auditor must notify each local agency whose service area will be altered of its estimated calculations. (Rev. & Tax. C. § 99(b)(3).) In the absence of a “A master property tax exchange agreement among [all affected] local agencies” (Rev. & Tax. C. §99(b)(7)(B) and (d)), receipt of the estimates from the Auditor triggers a 60-day “negotiation period” during which all local agencies affected by the jurisdictional change shall commence negotiations to determine the amount of property tax revenues to be exchanged between and among the local agencies. (Rev. & Tax. C. § 99(b)(4).) This negotiation period may be extended by 30 days (*Id.*)

Attachment 10

Hon. Minnie Diallo

June 11, 2025

Page 3

As relevant here, where a special district is affected by detachment, the County must consult with the District and negotiate any exchange of property tax revenues on behalf of the district as well. (Rev. & Tax. C. § 99(b)(5).)

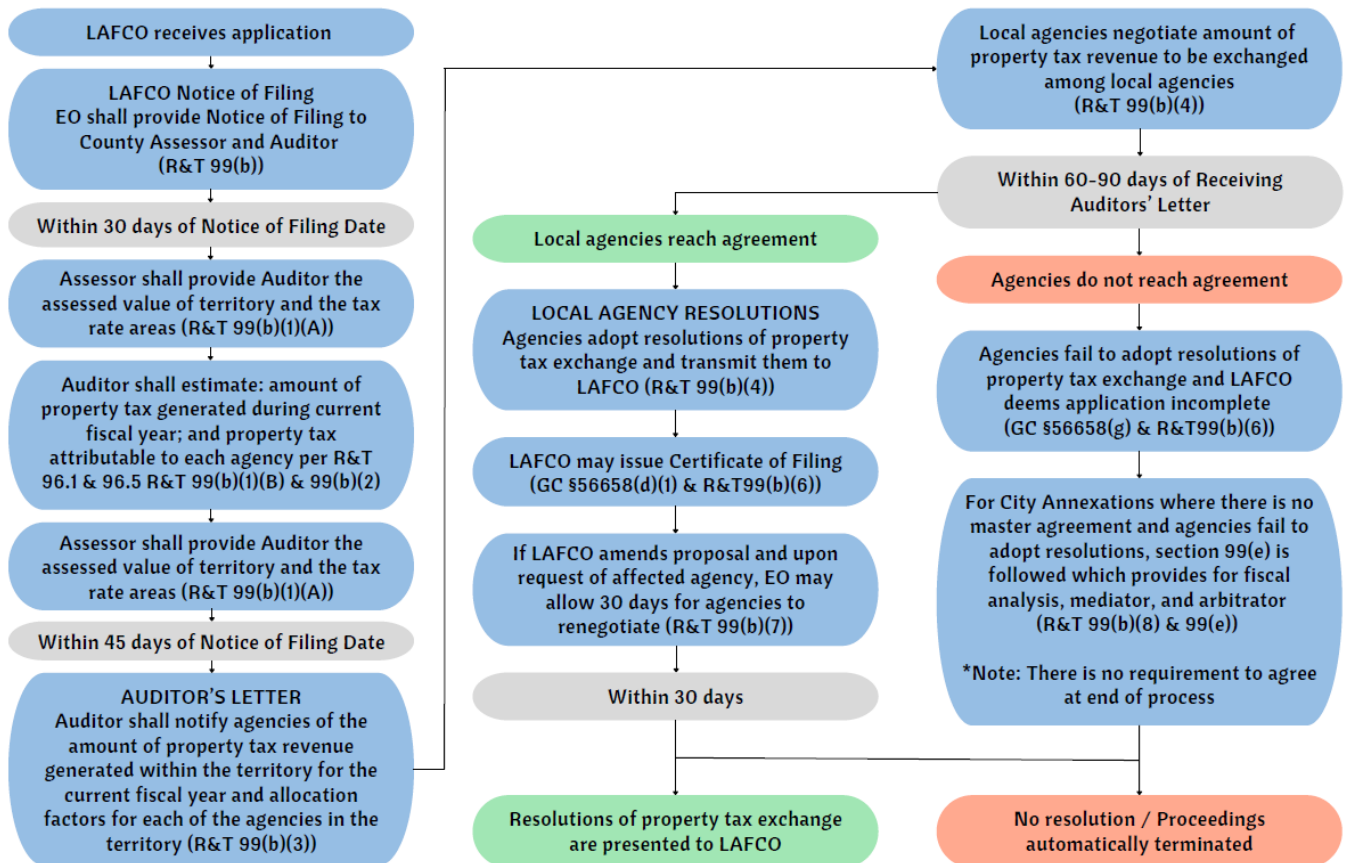
Finally, LAFCo is prohibited from issuing a certificate of filing or scheduling the detachment for hearing unless and until tax revenue sharing is negotiated and adopted between the City and District (via County) within that 60 or 90 day negotiation period. (Rev. & Tax. C. § 99(b)(6); see also *Greenwood Addition Homeowners Assn. v. City of San Marino* (1993) 14 Cal.App.4th 1360, 1375 [“[A]greement is a precondition to LAFCO’s hearing and determining the application.”].)

Below is a flowchart showing this process:



Property Tax Exchange Process (Annexations & Detachments)

Where there is no master tax sharing agreement in place per R&T 99(d)



Attachment 10

Hon. Minnie Diallo

June 11, 2025

Page 4

B. The District and City have not yet negotiated or reached agreement regarding property tax exchange for this application as required by §99(b)(6), and therefore the detachment cannot proceed.

State law unequivocally prohibits the Commission from issuing a certificate of filing pursuant to Gov't. C. § 56658 or, in turn, holding a hearing on or approving an application for that matter, unless and until all affected local agencies timely present evidence of satisfaction of the Section 99(b) negotiation process. In the City's application to LAFCo, LGRE asserted that the 2015 "County of San Joaquin & City of Stockton Agreement for Property Tax Allocation upon Annexation" ("2015 Agreement") fully satisfied this prerequisite for the reorganization and demanded that the Executive Officer immediately issue the Notice of Filing and schedule the application for hearing.¹

As noted above, in order to satisfy Section 99(b)'s precondition to LAFCo issuing a Certificate of Filing, either the City and the District must timely complete application specific tax-sharing negotiation within the Negotiation Period or there must be a "master property tax exchange agreement among [all affected] local agencies" as described in §99(d), including the District. (Rev. & Tax. C. 99(8)(B)). Although not expressly articulated, LGRE's assertion seems to be that this 2015 Agreement between the City and County operates as a master property tax exchange agreement pursuant to Section 99(d) and therefore there is no need to engage in the Section 99(b) negotiation process. While this may be correct as to the County and the annexation component of the application, the 2015 Agreement does *not* act as nor meet the statutory requirements of a master tax sharing agreement with respect to detachment from the District.

Regarding "master property tax exchange agreements" Section 99(d) provides:

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. (italica added)

The 2015 Agreement does not satisfy the statutory requirements to act as a master property tax exchange agreement between the City and the District for myriad reasons. First, the District is not a party subject to the 2015 Agreement. The District is not named in the agreement nor is it a signatory to that agreement. Nor does the 2015 Agreement state or otherwise indicate it was negotiated on behalf of the District.

¹ We are informed that the Executive Director, relying on LGRE's representation, did initially issue a Certificate of Filing for the entire reorganization application and scheduled this hearing. But, as noted in the staff report and below, the Executive Officer has since determined that the 2015 Annexation Agreement applies only to tax sharing between the City and County and does not apply to special districts facing detachment of territory.

Attachment 10

Hon. Minnie Diallo

June 11, 2025

Page 5

Moreover, the agreement does not allocate any share of property taxes to the District. The resolutions adopted by the Stockton City Council and Board of Supervisors, respectively, in 2015, submitted as attachments to LGRE's April 1, 2025 letter also note that the agreements are solely between the City and the County and make no reference to covering any third party agencies. Perhaps most telling is the fact that neither the City nor the County at any point during the 2024 negotiations referred to this agreement as applying to the District. As noted below, both the LAFCo Executive Officer and the County Administrator have independently concluded that the 2015 Agreement does not apply to the District.

Thus, substantial evidence demonstrates that while the 2015 Agreement may constitute a "master property tax exchange agreement" between the City and the County for annexations, it does not act as a master property tax exchange agreement between the City and the District for detachments from the District.

Nor can the 2015 Agreement be held to satisfy the Section 99(b) negotiation process. As noted in my letter of May 19, 2025, the 2015 Agreement does not identify the territory proposed to be reorganized for the Project and does not identify the local agencies that would be affected by the proposed reorganization as required by Section 99(b)(1). Nor was the District consulted by the County in 2015 in negotiating this agreement as would be required by Section 99(b)(5) for any agreement negotiated through the Section 99(b) process. Finally, Section 99(b)(6) requires that negotiation occur during the 60/90-day "negotiation period." This period just commenced for this reorganization application. Thus, a 10-year-old agreement fails to satisfy the requirements of Section 99(b)(5) as a matter of law.

So while the Agreement appears effective as between the City and County for the annexation component of this application, LGRE's claim that the Agreement satisfies the requirements of Section 99(b) and simply leaves the District with zero percent of tax revenue sharing upon detachment is unsupported by the County, LAFCo Executive Officer, and District's review of the Agreement and is unsupported by any evidence – let alone substantial evidence in the record.

C. Approving the reorganization with detachment, absent Section 99(b) compliance, would constitute a prejudicial abuse of discretion.

As noted above, State law unequivocally prohibits the Commission from issuing a certificate of filing or holding a hearing on an application unless and until the City satisfies the Section 99(b) negotiation process with respect to the District:

"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

Attachment 10

Hon. Minnie Diallo

June 11, 2025

Page 6

each such county and city whereby each county and city agrees to accept the exchange of property tax revenues.” (Rev. & Tax. C. § 99(b)(6).)

Because this qualification to approval has not yet occurred, the Commission is barred from taking any action to approve the detachment component of the proposal. “[A]greement is a precondition to LAFCO’s hearing and determining the application.” (*Greenwood Addition Homeowners Assn. v. City of San Marino* (1993) 14 Cal.App.4th 1360, 1375 [holding failure of city and county to complete Section 99(b) tax sharing negotiations during negotiation period rendered annexation application void].)

Staff expressly recognizes that, contrary to LGRE’s initial statements, the 2015 Agreement does not satisfy the Section 99(b) negotiation prerequisite for detachment. (see, Staff Report Packet at pp. 47-48 “ Upon staff’s initial review it appears that this agreement is only intended and only applies to annexations, not reorganizations or detachments. The only public agencies involved with annexations are the annexing city and San Joaquin County. Reorganizations and detachments on the other hand usually involve territory of other agencies”² and proposes Condition 7 as a means to move the project forward.

While the District appreciates staff’s attempt to remedy the fatal shortcoming through Condition 7, in fact Condition 7 runs afoul of Section 99(b) and exceeds LAFCo’s authority under the statute. Specifically this proposed condition would approve the entire reorganization application, including detachment from the District, but would prevent any part of the reorganization from becoming effective unless and until the City and District returned with proof of a tax sharing agreement for the Project within one year.

The condition exceeds LAFCo’s authority because it acts to supersede the statutory requirements of Section 99(b) which requires tax sharing negotiations be completed within the 60/90-day negotiation period *before* the application may proceed to hearing and instead hears and approves the application and then grants the City and District one year to negotiate a tax sharing agreement. This puts the approval cart before the tax-negotiation horse, so to speak, and extends the negotiation period from 60/90 days occurring prior to approval, to one year after approval in plain contravention of the statute. Importantly, “San Joaquin LAFCO ‘has only those express (or necessarily implied) powers which are specifically granted to it by statute.’” (*Tracy Rural Cnty. Fire Prot. Dist. v. Loc. Agency Formation Com. of San Joaquin Cnty.*, (2022) 84 Cal. App. 5th 91, 107 [holding that this very agency acted in excess of its jurisdiction and committed reversible error in adopting a policy requiring all annexations to the City

² And this conclusion was corroborated by the County Administrator via letter of today explaining “we agree with the Executive Officer’s statement...It is our assumption that negotiations for detachment from special districts per the requirements of Revenue and Taxation Code Section 99(b)(5) would have been concluded separately and are not included in the [2015 Agreement].”

Attachment 10

Hon. Minnie Diallo

June 11, 2025

Page 7

of Tracy to include detachment from Tracy Rural Fire Protection District because, “San Joaquin LAFCO does not possess the statutory authority to order detachment of fire protection services from Tracy Rural in future annexations of territory by the City, but rather must act on specific proposals for annexation and/or detachment.”].) Thus, because Condition 7 is inconsistent with Section 99(b)’s express requirements, its adoption would not bring the approval of detachment into compliance with State law.

And for the same reasons, approval of detachment with LGRE’s proposed substitute Condition 7, which simply requires LGRE to pay \$25,000 to the District in lieu of the City negotiating a tax-sharing agreement under Section 99(b), would also amount to reversible error.

Thus, because the City has not yet satisfied its obligations to negotiate property tax exchange with the district during the negotiation period as required by Section 99(b), the detachment component of the application cannot be approved at this time.

D. Proposal to move project forward

As noted above, the District supports LGRE’s development proposal and supports annexation of the property at this time. The only outstanding issue holding the project back is that of Fire District detachment and compliance with Section 99(b). Rather than place the entire application on hold to ensure compliance with Section 99(b), the District encourages LAFCo the City to determine whether the application may be bifurcated to allow annexation to be considered and approved immediately while detachment goes through the Section 99(b) negotiation process and then may return to the commission for consideration upon completion of that process within the time allowed by statute.

Such action would ensure compliance with Section 99(b) regarding detachment but would also allow the applicant to immediately proceed with construction of his Project and expedite the City’s ability to begin collecting permit fees and sales tax revenues for the Project.

Very truly yours,
McKINLEY, CONGER, JOLLEY & GALARNEAU, LLP



BRETT S. JOLLEY
Attorney-at-Law

cc: J.D. Hightower, LAFCo Executive Officer

Attachment 10

Hon. Minnie Diallo

June 11, 2025

Page 8

Sandy Regalo, County Administrator
Stephanie Ocasio, City of Stockton Community Development Director
Dana Kennedy, counsel for LGRE
Minnie Diallo - LAFCo Chair (mdiallo@ci.lathrop.ca.us)
Steven Ding – LAFCo Vice Chair (sding@sjgov.org)
Gary Barton (gbarton@cityofripon.org)
Mario Gardea (dist1@sjgov.org)
Peter Johnson (pjohnson@pacific.edu)
Sonny Dhaliwal (sdhaliwal@sjgov.org)
Rex Dhatt (rexsdhatt@gmail.com)
Nubia Goldstein, LAFCo counsel
Chief Ed Martel, Montezuma FD