



Local Agency Formation Commission of Napa County
Subdivision of the State of California

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We Manage Local Government Boundaries, Evaluate Municipal Services, and Protect Agriculture

August 5, 2013

Agenda Item No. 8b (Discussion)

July 29, 2013

TO: Local Agency Formation Commission

FROM: Keene Simonds, Executive Officer

SUBJECT: Legislative Report

The Commission will receive a status report on the first year of the 2013-2014 session of the California Legislature as it relates to items directly or indirectly effecting Local Agency Formation Commissions. The report also updates the Commission on potential changes to the section of law involving outside municipal service extensions. The report is being presented for discussion with possible direction for staff with regard to issuing comments on specific items of interest.

Local Agency Formation Commissions (LAFCOs) are political subdivisions of the State of California tasked with providing regional growth management services in all 58 counties. LAFCOs' duties and powers have increasingly expanded since their creation in 1963 as more than 200 bills have been subsequently enacted and resulting in two distinct responsibilities: regulating the physical development of cities and special districts and informing such decisions through mandated planning activities.

A. Background

The California Association of LAFCOs or "CALAFCO" was established in 1971 to assist all 58 commissions in fulfilling their prescribed regulatory and planning duties. This includes serving as an advocacy resource in proposing and/or reviewing new legislation and facilitated through an appointed 16-member Legislative Committee. The Committee meets on a regular basis to review, discuss, and offer recommendations to the CALAFCO Board of Directors with regard to new legislation that would have either a direct impact on LAFCO law or laws LAFCO helps to administer. Committee actions are guided by the Board's adopted policies, which are annually reviewed and amended to reflect current year priorities. LAFCO of Napa County ("Commission") currently has two appointed representatives on the Committee: Juliana Inman and Keene Simonds.

Joan Bennett, Commissioner
Councilmember, City of American Canyon

Gregory Pitts, Commissioner
Councilmember, City of St. Helena

Juliana Inman, Alternate Commissioner
Councilmember, City of Napa

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Keene Simonds
Executive Officer

B. Discussion and Analysis

Current Legislative Items

The Committee held a conference call on July 26, 2013 to update and discuss legislative interests for the first year of the 2013-2014 session. As of date, there are 20 bills the Committee is currently tracking that propose either direct or indirect impacts on LAFCOs; the latter representing the largest category and predominately tied to several bills introduced this session as part of the Governor's coordinated effort to reform the California Environmental Quality Act. However, in terms of the remaining tracked bills, staff believes only one would have substantive impact on the Commission given local conditions if enacted. A summary of this lone bill of local interest is summarized below.

- **Assembly Bill 743 (Logue) Island Annexation Proceedings**
This legislation is sponsored by CALAFCO and would make substantive amendments to the existing statute governing expedited island annexation proceedings; proceedings that presently allow LAFCOs to waive protest for proposals filed by cities to annex entire or substantially surrounded county islands so long as certain conditions are satisfied. These amendments are highlighted by eliminating the statute's approaching sunset date of January 1, 2014. This bill has been returned to the Assembly to incorporate a friendly amendment from Senator Wolk to reference disadvantaged unincorporated communities. The Commission is already on record in supporting the legislation in concert with the agency's efforts to establish a local island annexation program. The City of Napa has also filed a letter of support at the Commission's request. CALAFCO anticipates the legislation will be passed without any substantive objections or amendments and take effect on January 1, 2014.

Pending Legislative Items

The CALAFCO Board met on July 12th in Sacramento and revisited its preferences in either moving forward or changing direction with respect to its earlier action to approve amendments involving Government Code Section 56133; the statute requiring agencies to receive written approval from LAFCOs before providing new or extended municipal services outside their jurisdictional boundaries and spheres of influence.¹ As members will recall, these previously approved amendments were initially requested by the Commission in 2009 and in response to reviewing a request from the City of Napa referred to as the "Gutterson" project. The previously approved amendments, accordingly, were predicated on expanding LAFCOs' authority to approve requests beyond spheres of influence without making a health or safety determination if certain safeguard findings could be made at noticed public hearings.² CALAFCO, however,

¹ Effective date is January 1, 2001.

² As proposed, the required safeguard findings included in the initial amendments involve determining the extension is (a) adequately contemplated in a municipal service review, (b) will not result in adverse impacts on agricultural or open space resources, and (c) consistent with locally adopted policies.

began to reconsider its previous approval after several LAFCOs expressed concern and eventually leading to a lengthy Board meeting on the topic on February 8th in Irvine. The Board received approximately three hours of testimony and decided to create a new subcommittee to determine if further edits could bridge the interests of both proponents and opponents. The subcommittee ultimately agreed by a majority vote to revised amendments that specifically curb approvals involving lands beyond spheres of influence to only developed lands or undeveloped lands in which services were previously established. The Board approved the revised amendments 15 to 1 with Commission Inman casting the lone no vote at the July 12th meeting.

A copy of the revised amendments approved by CALAFCO is attached for Commission review. Also attached is a comment letter prepared by staff and filed with CALAFCO prior to taking action on July 12th addressing the key policy implications tied to the revised amendments. It is currently expected the Board will seek an author for the revised amendments with the goal of introducing legislation in the 2014-2015 session.

C. Commission Review

Commissioners are encouraged to discuss and provide feedback on the report. This includes providing direction to staff with respect to making comments on any legislative items of interest or concern to the Commission.

Attachments:

- 1) CALAFCO Legislative Policies
- 2) Revised Amendments to Government Code Section 56133
- 3) Comment Letter to CALAFCO on Government Code Section 56133



CALAFCO 2012 Legislative Policies

Adopted by the Board of Directors on 10 February 2012

1. LAFCo Purpose and Authority

- 1.1. Support legislation which enhances LAFCo authority and powers to carry out the legislative findings and authority in Government Code §56000 et. seq.
- 1.2. Support authority for each LAFCo to establish local policies to apply Government Code §56000 et. seq. based on local needs and conditions, and oppose any limitations to that authority.
- 1.3. Oppose additional LAFCo responsibilities which require expansion of current local funding sources. Oppose unrelated responsibilities which dilute LAFCo ability to meet its primary mission.
- 1.4. Support alignment of responsibilities and authority of LAFCo and regional agencies which may have overlapping responsibilities in orderly growth, preservation, and service delivery, and oppose legislation or policies which create conflicts or hamper those responsibilities.
- 1.5. Oppose grants of special status to any individual agency or proposal to circumvent the LAFCo process.
- 1.6. Support individual commissioner responsibility that allows each commissioner to independently vote his or her conscience on issues affecting his or her own jurisdiction.

2. LAFCo Organization

- 2.1. Support the independence of LAFCo from local agencies.
- 2.2. Oppose the re-composition of any or all LAFCos without respect to the existing balance of powers that has evolved within each commission or the creation of special seats on a LAFCo.

- 2.3. Support representation of special districts on all LAFCos in counties with independent districts and oppose removal of special districts from any LAFCo.
- 2.4. Support communication and collaborative decision-making among neighboring LAFCos when growth pressures and multicounty agencies extend beyond a LAFCo's boundaries.

3. Agricultural and Open Space Protection

- 3.1. Support legislation which clarifies LAFCo authority to identify, encourage and insure the preservation of agricultural and open space lands.
- 3.2. Encourage a consistent definition of agricultural and open space lands.
- 3.3. Support policies which encourage cities, counties and special districts to direct development away from prime agricultural lands.
- 3.4. Support policies and tools which protect prime agricultural and open space lands.
- 3.5. Support the continuance of the Williamson Act and restore program funding through State subvention payments.

4. Orderly Growth

- 4.1. Support the recognition and use of spheres of influence as the management tool to provide better planning of growth and development, and to preserve agricultural, and open space lands.
- 4.2. Support adoption of LAFCo spheres of influence by other agencies involved in determining and developing long-term growth and infrastructure plans.
- 4.3. Support orderly boundaries of local agencies and the elimination of

islands within the boundaries of agencies.

- 4.4. Support communication between cities, counties, and special districts through a collaborative process that resolves service, housing, land use, and fiscal issues prior to application to LAFCo.
- 4.5. Support cooperation between counties and cities on decisions related to development within the city's designated sphere of influence.

5. Service Delivery and Local Agency Effectiveness

- 5.1. Support the use of LAFCo resources to prepare and review Regional Transportation Plans and other growth plans to ensure reliable services, orderly growth, sustainable communities, and conformity with LAFCo's legislative mandates.
- 5.2. Support LAFCo authority and tools which provide communities with local governance and efficient service delivery options, including the authority to impose conditions that assure a proposal's conformity with LAFCo's legislative mandates.
- 5.3. Support the creation or reorganization of local governments in a deliberative, open process which will fairly evaluate the proposed agency's long-term financial viability, governance structure and ability to efficiently deliver proposed services.
- 5.4. Support the availability of tools for LAFCo to insure equitable distribution of revenues to local government agencies consistent with their service delivery responsibilities.
- 5.5. Support collaborative efforts among agencies and LAFCOs that encourage opportunities for sharing of services, staff and facilities to provide more efficient and cost effective services. Support proposals which provide LAFCo with additional tools to encourage shared services.

2012 Legislative Priorities

Primary Issues

Viability of Local Governments	Support legislation that maintains or enhances LAFCo's ability to review and act to assure the efficient and sustainable delivery of local services and the financial viability of agencies providing those services to meet current and future needs. Support legislation which provides LAFCo and local communities with options for local governance and service delivery, including incorporation as a city or formation as a special district. Support efforts which provide tools to local agencies to address fiscal challenges and maintain services.
Authority of LAFCo	Support legislation that maintains or enhances LAFCo's authority to condition proposals to address any or all financial, growth, service delivery, and agricultural and open space preservation issues.
Agriculture and Open Space Protection	Preservation of prime agriculture and open space lands that maintain the quality of life in California. Support policies that recognize LAFCo's ability to protect and mitigate the loss of prime agricultural and open space lands, and that encourage other agencies to coordinate with local LAFCOs on land preservation and orderly growth.
Water Availability	Promote adequate water supplies and infrastructure planning for current and planned growth. Support policies that assist LAFCo in obtaining accurate and reliable water supply information to evaluate current and cumulative water demands for service expansions and boundary changes including impacts of expanding private and mutual water company service areas on orderly growth.

Issues of Interest

- Housing** Provision of territory and services to support affordable housing and the consistency of regional land use plans with local LAFCo policies.
- Transportation** Effects of Regional Transportation Plans and expansion of transportation systems on future urban growth and service delivery needs, and the ability of local agencies to provide those services.
- Flood Control** The ability and effectiveness of local agencies to maintain and improve levees and the public safety of territory proposed for annexation to urban areas which is at risk for flooding. Support legislation that includes security of the delta and assessment of agency viability in decisions involving new funds for levee repair.
- Adequate Municipal Services in Inhabited Territory** Expedited processes for inhabited annexations should be consistent with LAFCo law and be fiscally viable. Funding sources should be identified for extension of municipal services to disadvantaged unincorporated communities, including option for annexation of contiguous disadvantaged unincorporated communities.

Proposed Amendments to G.C. Section 56133

(Approved by the CALAFCO Board on April 29, 2011 and reapproved by the Legislative Committee on December 7, 2012) As approved by the CALAFCO Board of Directors on July 12, 2013.

(a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional ~~boundaries~~ boundary only if it first requests and receives written approval from the commission ~~in the affected county~~. The commission may delegate approval of requests made pursuant to subdivisions (b) and (c)(1) below to the Executive Officer.

(b) The commission may authorize a city or district to provide new or extended services outside its jurisdictional ~~boundaries~~ boundary but within its sphere of influence in anticipation of a later change of organization.

(c) If consistent with adopted commission policy, ~~t~~The commission may authorize a city or district to provide new or extended services outside its jurisdictional ~~boundaries~~ boundary and outside its sphere of influence only under any one of the following circumstances:

(1) To respond to an existing or impending threat to the public health or safety of the residents of the affected territory if both of the following requirements are met:

(1) (A) The entity applying for ~~the contract~~ approval has provided the commission with documentation of a threat to the health and safety of the public or the affected residents.

(2) (B) The commission has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, or sewer system corporation as defined in Section 230.6 of the Public Utilities Code, that has filed a map and a statement of its service capabilities with the commission.

(2) To serve existing development where the Commission can make the determination set forth in (5) below:

(3) To serve territory, developed and/or undeveloped, that has been in the established service area of an existing provider, public or private, that has historically provided such service to at least part of the territory and the Commission finds that:

(A) the provider is no longer capable of providing the service or

(B) the provider made the commitment to provide the service to the territory prior to January 1, 1994.

(4) To support existing or planned uses within incorporated territory, following a noticed public hearing before the Commission, provided that written evidence of support is presented to the Commission from the city in which the territory to receive extraterritorial services lies.

(2) (5) Such service extensions under (2) and (3) above may only be approved by the Commission after ~~To support existing or planned uses involving public or private properties, subject to approval at a noticed public hearing and the Commission adoption that includes~~ of all of the following determinations:

(A) The extension of service or service deficiency was identified and evaluated in a municipal service review prepared by the commission pursuant to section 56430.

(B) The effect of the extension of service would not result in adverse impacts on premature conversions of open space or agricultural lands or ~~result in adverse growth inducing impacts.~~

(C) A later change ~~or~~ of organization involving the subject property territory and the affected agency is not feasible or desirable based on this division and the adopted policies of the commission.

(d) The executive officer, within 30 days of receipt of a request for approval by a city or district ~~of a contract~~ to extend services outside its jurisdictional boundary, shall determine whether the request is complete and acceptable for filing or whether the request is incomplete. If a request is determined not to be complete, the executive officer shall immediately transmit that determination to the requester, specifying those parts of the request that are incomplete and the manner in which they can be made complete. When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete, unless the commission has delegated approval of ~~those~~ requests made under this section to the executive officer. The commission or executive officer shall approve, disapprove, or approve with conditions the ~~contract for~~ extended services. If ~~the contract is~~ the extended services are disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.

(e) This section does not apply to ~~contracts or agreements solely involving~~ two or more public agencies where the commission determines the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider.

(f) This section does not apply to ~~contracts for~~ the transfer of nonpotable or nontreated water.

(g) This section does not apply to ~~contracts or agreements solely involving~~ the provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries. However, prior to extending surplus water

service to any project that will support or induce development, the city or district shall first request and receive written approval from the commission in the affected county.

(h) This section does not apply to an extended service that a city or district was providing on or before January 1, 2001.

(i) This section does not apply to a local publicly owned electric utility, as defined by Section 9604 of the Public Utilities Code, providing electric services that do not involve the acquisition, construction, or installation of electric distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundaries.

(j) The application of this section rests solely within the jurisdiction of the commission in the county in which the extension of the service is proposed.



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We Manage Local Government Boundaries, Evaluate Municipal Services, and Protect Agriculture

July 10, 2013

Delivered by Electronic Mail

Ms. Pamela Miller, Executive Director
 California Association of Local Agency Formation Commissions
 1215 K Street, Suite 1650
 Sacramento, California 95814
pmiller@calafco.org

SUBJECT: Proposed Amendments to Government Code Section 56133

Ms. Miller:

On behalf of the Local Agency Formation Commission (LAFCO) of Napa County, and based on membership comments provided at our last regular meeting, we respectfully offer the following comments with regard to the CALAFCO's Board's consideration on the above-referenced item scheduled for its July 12, 2013 meeting in Sacramento.

- Napa LAFCO supports the proposed amendments to Section 56133 adopted by the Legislative Committee and Board in separate actions in 2011. Commissioners believe these previously adopted amendments represent a measured approach in providing LAFCOs more discretion in authorizing new or extended municipal services beyond spheres of influence when public health or safety threat findings cannot be reasonably made in order to address local conditions.
- Napa LAFCO appreciates the work of the Board's subcommittee tasked with identifying alternative amendments to Section 56133 to help reconcile differences communicated at its February 8, 2013 meeting in Irvine. As referenced in your agenda report, the subcommittee has agreed by a majority vote to alternative amendments for Board consideration. Markedly, the key distinction between the two sets of amendments now before the Board as viewed by Commissioners is as follows:
 - The "2011 Version" establishes a new allowance for LAFCOs to authorize services beyond spheres of influence to either developed or undeveloped territories if certain safeguard findings are made at public hearings.
 - The "2013 Version" limits the referenced allowance involving undeveloped territories by curbing approval to instances in which services had been previously established to the affected lands.

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Page 2 of 2

- Napa LAFCO's favors the 2011 Amendments given it reduces pressure on commissions to expand spheres of influence – which statutorily implies annexations are forthcoming – in unincorporated areas to accommodate needed and locally acceptable service provision. Commissioners believe this existing pressure represents the greater and proven threat in inducing leap-frog development and/or proliferation of special districts compared to the proposed allowance to allow commissions to exercise discretion in authorizing new services beyond spheres.
- Napa LAFCO concedes the 2011 Amendments are not likely to generate undivided support as this time among all LAFCOs; a precept the Board has previously suggested was needed before sponsoring the legislation.
- Napa LAFCO recognizes the valuable contributions made in the underlying discussion over the last several years by opponents of the 2011 Amendments and hope additional dialogue can continue on this important topic as an extension to any actions the Board chooses to take on July 12th.

In addition to the preceding comments, Napa LAFCO extends its sincere gratitude to you for your good and impartial handling of this item. We recognize you inherited this relatively contentious item from the start of your service to the Board, and you have done so admirably.

Respectfully and on behalf of the Commission,



Keene Simonds
Executive Officer

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cc: Napa Commissioners
Lou Ann Texeria, CALAFCO Executive Officer
Clark Alsop, CALAFCO Counsel