AGENDA ITEM NO. 7.c

LAFCO *of Monterey County*

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KATE McKENNA, AICP
Executive Officer

DATE: March 28, 2011

TO: Chair and Members of the Formation Commission

FROM: Kate McKenna, AICP, Executive Officer

SUBJECT: CALIFORNIA ASSOCIATION OF LOCAL AGENCY FORMATION COMMISSIONS - ACTIVITIES REPORT

SUMMARY OF RECOMMENDATION:

This report is for information only; no action is required at this time.

EXECUTIVE OFFICER'S REPORT:

State Legislation

The Legislative Committee of the California Association of Local Agency Formation Commissions (CALAFCO) determines the need for legislation supporting LAFCO's legislative purposes and to monitor current legislation. Although CALAFCO is now monitoring 36 bills, it has not taken a stand on any of these, except to support three routine measures that would "validate" the organization, boundaries, acts, proceedings, and bonds of the state and counties, cities, and specified districts, agencies, and entities. None of the bills being monitored require action by CALAFCO or LAFCO of Monterey County at this time.

Committee Hearings on Special Districts and LAFCOs

The Assembly Committee on Local Government and the Committee on Accountability and Administrative Review held a Joint Hearing on "*California's Special Districts: Efficiency and Alternatives"* on March 2. CALAFCO was invited to testify on its experience with consolidations and LAFCO's perspective on potential improvements to the process. The comments of CALAFCO Executive Director Bill Chiat are included, for information, in Attachment 1.

While that hearing resulted in no immediate action, there continues to be interest in the Legislature and locally for the potential consolidation of local agencies. Some see this as a way to streamline local government and reduce an overlapping and confusing array of local agencies. Others see a potential to reduce administrative costs and free up property tax revenues for other local or state purposes.

Because the Joint Hearing raised awareness of LAFCOs, the Assembly Local Government Committee scheduled a follow-up informational hearing to learn about the role and responsibilities of LAFCOs. The hearing will be held in late March and will bring Members up to speed on LAFCO's purpose and current LAFCO activities. CALAFCO's Bill Chiat will present an overview, followed by presentations by the LAFCO Executive Officers from Butte, San Bernardino, and Santa Cruz Counties. An overview of the talking points for CALAFCO's presentation is included in Attachment 2.

CALAFCO Professional Development

As part of a series of courses that I am coordinating in my volunteer role as CALAFCO Deputy Executive Officer, CALAFCO University will present *"California Planning and Land Use Laws for LAFCO Staff"* on April 5.

Senior Analyst Thom McCue will moderate a session on *"Taxes, Assessments and Fees"* at the CALAFCO Staff Workshop on April 7. I will present a training session for LAFCO Clerks at the workshop. The session will focus on the statutory duties of Clerks and their roles in the accomplishments of LAFCOs. General Counsel Leslie Girard will attend the workshop.

Respectfully Submitted,

Kate McKenna, AICP
Executive Officer

Attachments:

1. *"California's Special Districts: Efficiency & Alternatives*:" Comments to the Joint Hearing of the Assembly Committee on Local Government and the Committee on Accountability & Administrative Review, William Chiat, CALAFCO Executive Director.
2. *"An Overview of Local Agency Formation Commissions:"* talking points for the CALAFCO presentation to the March 23 Assembly Committee on Local Government Informational Hearing.

Attachment 1

Comments to the Joint Hearing of the Assembly Committee on Local Government and the Committee on Accountability & Administrative Review

California's Special Districts: Efficiency & Alternatives

2 March 2011

William Chiat, Executive Director
California Association of Local Agency Formation Commissions

Thank you for the opportunity to share the perspectives of the Local Agency Formation Commissions. The Legislature created LAFCos in 1963 to, among other things, encourage orderly growth and development essential to the social, fiscal and economic well being of the state.

In creating LAFCos the Legislature recognized three key elements:

- That community service priorities be established by weighing the total community service needs against the total financial resources available;
- That those service priorities reflect local circumstances, conditions and limited financial resources;
- And whether services are proposed to be provided by a single-purpose agency, several agencies, or a multi-purpose agency, responsibility should be given to the agency or agencies that can best provide the service.

For nearly 50 years the 58 LAFCos have been actively engaged in working with all the local governments in their county to meet these legislative policies. My comments today are focused on four areas based on our experience with service efficiency and public agency delivery alternatives:

1. LAFCo's responsibility and authority
2. Observations from LAFCo experience
3. Factors which drive or are obstacles
4. Five ideas for further discussion

LAFCo Responsibility and Authority

LAFCo performs two roles relevant to today's conversation: 1) it reviews and acts on applications to form, consolidate, merge or reorganize special districts; and 2) it performs a periodic sphere of influence update and municipal service review for every city, county and most special districts.

As a **regulatory agency** LAFCo reviews and acts upon applications to among other things, **form** new districts or cities, **consolidate** special districts or a city and special district, **merge** a special district with a city, or **reorganize** local agencies, which consists of two or more changes of organization in a single application. Typically applications are initiated by one or more affected agencies, but they may also be made by petition of citizens.

In recent years the Legislature has added to LAFCo's authority in this area. It gave LAFCo authority to initiate applications for most actions (§56375). And in 2007 SB 819

(Hollingsworth) gave LAFCo permanent authority to consolidate districts formed under different principal acts (§56826.5).

As a **planning agency** LAFCo determines a sphere of influence for every city and most special districts (§56425). In order to prepare and update the Sphere, LAFCo conducts a Municipal Service Review (MSR). The review analysis includes determinations in six areas, including one in particular:

- Accountability for community service needs, including governmental structure and operational efficiencies (§56430)

These periodic service reviews are where LAFCo may identify opportunities for delivery alternatives, such as consolidation, if the analysis identifies potential service efficiencies, cost effectiveness or improvement in services.

LAFCo Experience with Consolidations

Over the years LAFCos have indentified opportunities where a consolidation or other alternative may create efficiencies or increase effectiveness for community services. Typically these fall into three categories:

1. **Strong potential** and the affected agencies have expressed interest or support. But changes in local agencies are not easy – even when desired – and don't come quickly. Even in these situations it may take years to happen; typically two or more years, with some as long as 15 or more years.
2. **Strong potential** and there may even be one willing agency, but at least one if not all the affected agencies oppose the LAFCo recommendation. A variety of obstacles prevent these from occurring.
3. And finally there are situations without easy answers. These are agencies with **significant financial distress or service deficiencies** and few options for resolving these problems. Simply consolidating these agencies is unlikely to result in any resolution of the underlying problems; and may make the problem worse. These require individual solutions tied to very difficult issues of finding new financial or management resources. There is no easy legislative fix.

Let me focus on the first two groups, however, since these provide the best opportunity for alternatives which result in service efficiencies and/or improved service delivery.

Factors that Drive or Obstruct Consolidations

First, when they do finally occur there are typically three drivers for consolidation. LAFCos watch for these and help facilitate the discussions that result:

1. Governing boards of the agencies recognize the potential for improved services or efficiencies and proceed with a new structure;
2. A financial, regulatory or other crisis creates an opportunity;
3. A new opportunity presents itself: vacant Board seats, departure of a chief executive(s), or a new Board elected.

The first obstacle we find are the **protest and election provisions** in current law. The potential of a majority protest or an election and the associated costs often stymies efforts. Currently, if LAFCo initiates an application a low threshold of a 10% protest will trigger an

election. Current law also contains what we refer to as the "hostile annexation provision." It allows the Board of an affected agency to protest a consolidation and require an election to be held within the boundaries of each affected agency. If there is any sense of opposition a consolidation rarely proceeds.

The second barrier is **political** in nature. It manifests in several ways:

- Governing Boards do not want to lose their position or authority.
- Communities are concerned about the loss of their community identity created by a district, even if it only provides sanitary services.
- Concern about loss of community representation on a larger governing Board.
- Agency executives who fear the loss of their job.

There are **practical considerations** which can be an obstacle or require significant time to negotiate. Sometimes these become fatal flaws. Examples include labor agreements, differing infrastructure quality, rate variations, and service contracts.

The **threat of litigation** from an affected agency is another obstacle. There are examples of districts using their reserves to sue LAFCo and applicant agencies to prevent a consolidation, and result in hundreds of thousands of dollars in litigation expenses.

The **cost of the application** processing can get in the way. The costs fund needed studies and analysis to determine specific efficiencies, a financial plan, rate structure, cost savings and other factors. There are also costs associated with protest hearings and an election if deemed necessary. The agency which initiates an application is responsible for the costs and to indemnify LAFCo against litigation. Most are unwilling to shoulder these costs unless the consolidation is virtually assured. Likewise LAFCo is unwilling to pay, as the costs would have to be passed on to the county, cities and special districts which fund LAFCo.

Finally, there is **community disinterest**. There are some local agencies that are completely under the community "radar screen" and are unwilling to consider a reorganization of any kind. In some cases, for example, a governing board has rarely, if ever, stood for election.

Opportunities for Solutions

From our experience we note five primary opportunities for solutions that may help encourage more efforts for local agencies to consider service delivery alternatives.

There are some solutions already successfully in practice under current law. For example there are many cases where there has been a functional consolidation through a Joint Powers Agreement or Memorandum of Understanding, or some other local agreement for efficient delivery of services, such as siting of a fire station. LAFCo may help facilitate these efforts by activating latent powers of an agency or serving as a facilitator in the process.

1. **Modify the Protest Provisions**. This is analogous to the streamlined city island annexation provisions created by the legislature. They were designed to encourage annexations and remove some of the process obstacles. A similar approach could be considered for LAFCo-recommended alternative structures. Some options include:
    a. Increase the protest thresholds (island annexations require a 50% protest)

b. Eliminate the "hostile annexation" vote provision, and if there is a vote allow it only in the area of the succeeding agency
c. Eliminate the vote provisions entirely and allow LAFCo to order a consolidation unless there is a 50% or more protest

CALAFCO is already working on a review and to prepare recommendations to update and bring consistency to all of the protest provisions in LAFCo law. Our intention is to bring recommended changes for discussion by stakeholders next spring.

2. Provide a **streamlined consolidation process** under certain circumstances to allow LAFCo to process an application in an expedited manner. Also expand LAFCo authority to condition the renegotiation of labor contracts and pension obligations (§56881.d). Such circumstances may include:
   a. Consolidations jointly initiated by all affected districts and a service review or other study demonstrates increased efficiency and effectiveness.
   b. Two or more districts provide the same or similar services to overlapping or neighboring communities.
   c. The agency governing board majority has not stood for election for eight or more years.

   Such a streamlined process was authorized by the Legislature last year with SB 1023 (Wiggins) which provides expedited procedures to convert Resort Improvement Districts and Municipal Service Districts to Community Service Districts.

3. Clarify how applications **will be funded**. Create provisions that require affected agencies to share the costs; to fund the costs from the property tax allocation or reserves of affected agencies, or similar provision. Similar to a new city incorporation, LAFCo could also be given authority to condition the consolidation on the successor agency paying the application costs.

4. Prohibit an affected local agency from using agency funds, reserves or property tax allocation for opposing or supporting a process, or for **litigation against a LAFCo** or applicant agency for processing an application for a consolidation, merger or reorganization.

5. Looking to the future, provide additional authority for LAFCo to **prohibit formation** of new agencies that are not determined to be fiscally viable. Such authority was included in SB 375 in 2005 that prohibited the formation of a Community Services District that did not have sufficient resources to carry out its purposes (§61014). Similar language may be appropriate regardless of the principal act. The Legislature has also authorized LAFCo to temporarily increase a Board size following a consolidation to 7, 9 or 11 members (§61030). Such a provision could be added to cover all principal acts.

Thank you for the opportunity to provide some perspectives on special district efficiencies and alternatives. We hope our comments are of value to the work of your committees.

Attachment 2

An Overview of Local Agency Formation Commissions

What Does LAFCo Do??

1. Forms new cities and special districts
2. Changes boundaries
3. Changes authorized services
4. Allows service extensions
5. Establishes Spheres of Influence
   - Performs municipal service reviews
6. Reorganizes local agencies
   - Annexation, consolidation, merger, dissolution, disincorporation

1

Why Create a LAFCo?

- Post World War II population and housing boom in California
- Freeway suburbs; scramble to finance and extend services
- City annexation "wars;" proliferation of limited purpose special districts
- Confusion with multiple local governments

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Legislative Solution: Local Flexibility of State Law

- No state commission or statewide agency
- Local control; no state appointments
- A LAFCo in every county
- Each LAFCo independent
- Local flexibility – Local policies
- Unique to California

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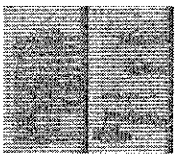
Nearly 50 Years of LAFCo

- **1963** – Knox Nisbet Act
- **1965** – District Reorganization Act
- **1971** – Spheres of Influence
- **1972** – Districts seated on LAFCo
- **1985** – Cortese Knox Local Government Reorganization Act
- **1993** – (Gotch) LAFCo Initiate Some Changes of Organization



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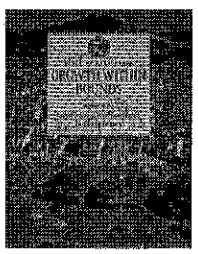
The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000

Significantly amended mission and structure of LAFCo

1. **Spheres of Influence**
2. **Municipal Service Reviews**
3. **LAFCo Independence**
4. **Adopt local policies**



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LAFCo Composition Commissions a Unique Mix

- 58 Commissions
- All Local: 2 county supervisors, 2 city council members, 1 public member
- A few with special memberships
- 29 LAFCos have 2 special district members
- Alternate member in each category
- All members required by law to represent the interests of the entire public

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An Overview of Local Agency Formation Commissions

Jurisdiction – Local Agencies

- Includes:
  - Counties, cities, most special districts
- Does NOT include:
  - Redevelopment agencies or JPAs
  - Community facilities or Mello-Roos districts
  - School or college districts
  - County boundary lines
  - Bridge and highway districts
  - Transit or rapid transit districts
  - Improvement districts

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As a REGULATORY Agency

- Approves modification of existing agencies – consolidations, annexations, reorganizations, dissolution – and formation of new ones
- Approves boundary changes if consistent with spheres
- Controls extension of public services
- Is prohibited from directly regulating how land is used, but …

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As a PLANNING Agency

- Develop and update Spheres of Influence for cities and districts
- Prepare Municipal Service Reviews for all local agencies
- Work cooperatively with public and private agencies and interests on growth, preservation and service delivery
- Share information with Metropolitan Planning Organizations and others

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Spheres of Influence §56425

- In determining the SOI the commission considers …
  1. Present and planned land uses, including agricultural and open-space
  2. Present and probable need for public facilities and services
  3. Present capacity of public facilities and adequacy of public services
  4. Existence of any social or economic communities of interest

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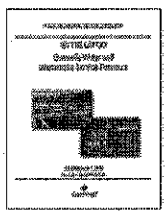
Spheres of Influence Includes Recommended Reorganizations

"The commission may recommend governmental reorganizations to particular agencies in the county, using the spheres of influence as the basis for those recommendations."



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Municipal Service Reviews §56430

"In order to prepare and to update spheres of influence the commission shall conduct a service review of the municipal services provided in the county …"

- All spheres updated by January 1st 2008
- Subsequent reviews every five years, *as necessary*

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An Overview of Local Agency Formation Commissions

Service Reviews Have Details on Local Agencies

- Growth projections of affected area
- Present and planned service and facility capacity
- Financial ability of agency
- Opportunities for shared facilities
- Accountability, structure, efficiencies
- Other matters of effective or efficient service delivery

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LAFCo is Independent

- Adopt local policies
- Commissions make final decisions; cannot be appealed to other administrative bodies
- Appoint an Executive Officer and Legal Counsel
- Can contract for staff services
- Administrative authority as an independent public agency

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LAFCo is Funded Locally

- Commissions adopt a budget each fiscal year
- Funded by the county, cities and – when seated on LAFCo – special districts
  - Local funding formulas allowed
- Processing fees offset expenses for specific applications
- Challenges of funding LAFCo in severe economic conditions

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Subject to State Laws

- Political Reform Act
  - Annual filing of assets and campaign contributions is required
  - Automatic disqualification from decisions related to entitlements for use
  - No disqualification on actions related to home jurisdiction
- Brown Act
- CEQA

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Courts Support LAFCo Authority

- "*Engaged in the pursuit of an overriding State purpose*"
- Is quasi-legislative; limited legal challenge to decisions
- Is the Legislature's "*watch dog*" on local governments
  - 5th District Court of Appeals, City of Ceres v. City of Modesto, 1969

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