

**KATE McKENNA, AICP**  
**Executive Officer**

DATE: August 22, 2011  
TO: Chair and Members of the Formation Commission  
FROM: Kate McKenna, AICP, Executive Officer  
SUBJECT: **MINOR AMENDMENT TO CLARIFY THE COMMISSION POLICY REGARDING  
REQUESTS TO PROVIDE SERVICES OUTSIDE OF A LOCAL AGENCY'S GEOGRAPHIC  
BOUNDARIES**

**SUMMARY OF RECOMMENDATIONS:**

It is recommended that the Commission:

1. Receive this report from the Executive Officer;
2. Open and close a period for public comments;
3. Discuss the recommended policy clarification (Exhibit A of Attachment 1), and
4. Adopt the recommended resolution (Attachment 1) finding that the proposed revision is not a "project" for purposes of the California Environmental Quality Act (CEQA), and adopting the recommended clarification to policies and procedures.

**EXECUTIVE OFFICER'S REPORT:**

**Background**

The Cortese-Knox-Hertzberg Local Government Reorganization Act grants LAFCO the authority to review and approve requests for a city or special district to provide services outside of its geographic boundaries. The sharing of services between local agencies is exempt from this regulation, if their enabling legislation grants them the powers to provide those services.

LAFCO of Monterey County has not in memory been requested to approve a service extension outside of a local agency's boundaries. However, we anticipate that a few such requests will be received in the near future.

### **Discussion**

In anticipation of receiving out-of-area service requests, the Executive Officer has consulted with General Counsel Leslie Girard on the definition of "services." Counsel Girard has opined that the definition of "services" **excludes** the management and administrative services provided by a local agency, where the local agency does not directly or indirectly own the facilities by or through which utilities or services are provided. In other words, if the local agency does not own the facilities, but merely operates them under contract for some other entity (such as a mutual water company), the action would not be regulated by LAFCO. If the local agency owns and operates the facilities, the action would be regulated by LAFCO.

If approved by the Commission, Attachment 1 will add this clarification to local policies for the review of out-of-area service requests. The clarification does not alter LAFCO's responsibility, or ability, to review and approve, or not approve, the provision of "public services" outside of the boundaries of a city or special district. The clarification is minor, has no negative implications, and is not subject to analysis under the California Environmental Quality Act.

### **ALTERNATIVE ACTIONS:**

In lieu of the recommended action, the Commission may consider these or other alternatives:

1. Modify the recommended amendment (Exhibit A of Attachment 1);
2. Take no action, or
3. Continue the meeting and provide other direction.

Respectfully Submitted,



Kate McKenna, AICP  
Executive Officer

### **Attachment:**

- Draft Resolution, and Exhibit A: Policies and Procedures Section D.XIV: Contract / Agreement Service Extension, with proposed tracked changes.

**ATTACHMENT 1**

**THE LOCAL AGENCY FORMATION COMMISSION OF MONTEREY COUNTY**

**RESOLUTION NO. 11-xx**

**ADOPTING A CLARIFICATION OF POLICIES AND PROCEDURES REGARDING THE DEFINITION OF THE TERM "SERVICE" AS IT APPLIES TO REQUESTS FOR SERVICE EXTENSION**

WHEREAS, the State Legislature, through the Cortese – Knox – Hertzberg Local Government Reorganization Act, California Government Code section 56000 et seq., has declared that it is the policy of the State to "encourage orderly growth and development which are essential to the social, fiscal and economic well-being of the State;" and

WHEREAS, section 56300 of the Government Code requires that LAFCO establish written policies and procedures and exercise its powers consistent with these policies and procedures; and

WHEREAS, there is a need for clarification of the Policies and Procedures regarding the definition of the term "Service" as it applies to requests for service extension, and

WHEREAS, the Local Agency Formation Commission has considered the proposed clarification at a public meeting on August 22, 2011.

NOW, THEREFORE, BE IT RESOLVED that the Local Agency Formation Commission of Monterey County finds that the proposed revision (Exhibit A) is not subject to environmental analysis because it only lays out general considerations for a Commission decision and is therefore not a "project" for the purposes of the California Environmental Quality Act (CEQA).

BE IT FURTHER RESOLVED that the Local Agency Formation Commission of Monterey County adopts the attached revision to the Policies and Procedures Relating to Spheres of Influence and Changes of Organization and Reorganization (Exhibit A).

UPON MOTION of Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, the foregoing resolution is adopted this 22nd day of August 2011 by the following vote:

AYES:	Commissioners:
NOES:	Commissioners:
ABSENT:	Commissioners:
ABSTAIN:	Commissioners:

\_\_\_\_\_, Chair  
Local Agency Formation Commission of Monterey County

ATTEST: I certify that this resolution is a true and complete record of said Commission's actions.

Witness my hand this \_\_\_ day of August, 2011

By: \_\_\_\_\_  
Kate McKenna, AICP, Executive Officer

## Exhibit A

### POLICIES AND PROCEDURES RELATING TO SPHERES OF INFLUENCE AND CHANGES OF ORGANIZATION AND REORGANIZATION

#### PART D. STANDARDS FOR THE EVALUATION OF PROPOSALS FOR A CHANGE OF ORGANIZATION OR REORGANIZATION

[The recommended addition to this policy section is in bold and underlined.]

#### XIV. CONTRACT / AGREEMENT SERVICE EXTENSION<sup>1</sup>

1. Requests for Service Extension:
  - a. In evaluating requests for service extensions outside an agency's jurisdictional boundary, LAFCO shall consider the Sphere of Influence of the affected agency.
  - b. Applicants shall submit an application to LAFCO prior to consideration of the proposal. Within 30 days the Executive Officer shall determine if the application is complete, and transmit the need for additional information immediately. Within 90 days after the application is deemed complete, the request shall be placed before LAFCO for a determination.
  - c. LAFCO may authorize a city or district to provide new or extended service outside its jurisdictional boundaries but within its Sphere of Influence in anticipation of a later change of organization. In this instance, LAFCO will consider the factors enumerated in Section 56668 in reviewing the request.
  - d. LAFCO may authorize a city of district to provide new or extended services outside its jurisdictional boundaries and Sphere of Influence to respond to a documented existing or impending threat to the public health or safety of the residents of the affected territory if the LAFCO has notified any alternative service provider as outlined in Section 56133.
  - e. The Executive Officer may administratively approve requests for service extension outside an agency's jurisdictional boundary if the applicant has satisfactorily demonstrated the existence of a public health or safety issue exists as identified in writing from the local public health officer. The Executive Officer is required to inform LAFCO at the next available meeting of any administratively approved service agreements.
  - f. **For purposes of this section, the term "service," or "services," does not include management and administrative services provided by a local agency where the local agency does not directly or indirectly own the facilities by or through which**

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<sup>1</sup> Subsection XIV was added through Resolution 94-5, February 25, 1994.

**utilities or services are provided. LAFCO's authority over service extensions does not apply to the provision of these management and administrative services.**

2. LAFCO authority over contract/agreement service extension does not apply to: (1) contracts or agreements solely involving two or more public agencies where 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; (2) contracts for the transfer of non-potable or non-treated water, and (3) 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 directly support agricultural industries. However, prior to extending surplus water that will support or induce development, the agency must receive written approval from LAFCO. (Section 56133.)