



**LAFCO MEETING  
AGENDA  
Wednesday, December 9, 2009  
1:15 PM**

**Board Meeting Chambers  
70 West Hedding Street, First Floor  
San Jose, CA 95110**

**CHAIRPERSON: John Howe • VICE-CHAIRPERSON: Susan Vicklund-Wilson  
COMMISSIONERS: Pete Constant, Don Gage, Liz Kniss  
ALTERNATES: Al Pinheiro, Sam Liccardo, George Shirakawa, Terry Trumbull**

The items marked with an asterisk (\*) are included on the Consent Agenda and will be taken in one motion. At the beginning of the meeting, anyone who wants to discuss a consent item should make a request to remove that item from the Consent Agenda.

**Disclosure Requirements**

**1. Disclosure of Campaign Contributions**

If you wish to participate in the following proceedings, you are prohibited from making a campaign contribution of more than \$250 to any commissioner or alternate. This prohibition begins on the date you begin to actively support or oppose an application before LAFCO and continues until three months after a final decision is rendered by LAFCO. No commissioner or alternate may solicit or accept a campaign contribution of more than \$250 from you or your agent during this period if the commissioner or alternate knows, or has reason to know, that you will participate in the proceedings.

If you or your agent have made a contribution of more than \$250 to any commissioner or alternate during the twelve (12) months preceding the decision, that commissioner or alternate must disqualify himself or herself from the decision. However, disqualification is not required if the commissioner or alternate returns the campaign contribution within thirty (30) days of learning both about the contribution and the fact that you are a participant in the proceedings. For disclosure forms and additional information see:

<http://www.santaclara.lafco.ca.gov/annexations&Reorg/PartyDiscForm.pdf>

**2. Lobbying Disclosure**

Any person or group lobbying the Commission or the Executive Officer in regard to an application before LAFCO must file a declaration prior to the hearing on the LAFCO application or at the time of the hearing if that is the initial contact. Any lobbyist speaking at the LAFCO hearing must so identify themselves as lobbyists and identify on the record the name of the person or entity making payment to them. For disclosure forms and additional information see:

<http://www.santaclara.lafco.ca.gov/annexations&Reorg/LobbyDiscForm.pdf>

**3. Disclosure of Political Expenditures and Contributions Regarding LAFCO Proceedings**

If the proponents or opponents of a LAFCO proposal spend \$1,000 with respect to that proposal, they must report their contributions of \$100 or more and all of their expenditures under the rules of the Political Reform Act for local initiative measures to the LAFCO office. For additional information and for disclosure forms see:

[http://www.santaclara.lafco.ca.gov/sclafcopolicies\\_annex&reorg\\_home.html](http://www.santaclara.lafco.ca.gov/sclafcopolicies_annex&reorg_home.html)

**1. ROLL CALL**

**2. PUBLIC PRESENTATIONS**

This portion of the meeting is reserved for persons desiring to address the Commission on any matter not on this agenda. Speakers are limited to THREE minutes. All statements that require a response will be referred to staff for reply in writing.

**3. APPROVE MINUTES OF OCTOBER 14, 2009 LAFCO MEETING**

**4. LAFCO ANNUAL REPORT (HELD FROM OCTOBER 14, 2009):**

**Possible Action:** Accept LAFCO Annual Report (July 1, 2008 - June 30, 2009).

**5. COUNTYWIDE FIRE SERVICE REVIEW**

**Possible Action:** Authorize staff to issue a RFP for consultant to prepare a countywide fire service review and delegate authority to LAFCO Executive Officer to enter into an agreement with the most qualified consultant in an amount not to exceed \$70,000 and to execute any necessary amendments subject to LAFCO Counsel review and approval.

**6. COMMENTS ON PROPOSED REGIONAL STRUCTURE FOR CALAFCO**

**Possible Action:** Consider CALAFCO's proposal for creating regions and provide comments to the CALAFCO Board and Executive Director.

**7. ADOPTION AND PRESENTATION OF RESOLUTION COMMENDING COMMISSIONER JOHN HOWE FOR HIS SERVICE TO LAFCO**

**8. 2009 CALAFCO ACHIEVEMENT AWARDS**

**Outstanding CALAFCO Member: Susan Vicklund Wilson**  
**Outstanding LAFCO Clerk: Emmanuel Abello**  
For Information Only.

**9. 2010 SCHEDULE OF LAFCO MEETINGS**

**Possible Action:** Adopt the schedule of LAFCO meetings and application filing deadlines for 2010.

**10. APPOINTMENT OF CHAIRPERSON AND VICE-CHAIRPERSON FOR 2010**

**Possible Action:** Appoint the Chairperson and Vice-Chairperson for 2010.

**11. EXECUTIVE OFFICER'S REPORT**

**11.1 Report on 2009 CALAFCO Annual Conference**

**Possible Action:** Accept report.

**11.2 Update on Implementation of LAFCO's Electronic Document Management System**

**Possible Action:** Accept report.

**11.3 New Cities Representative Appointed to LAFCO**

For Information Only.

**12. LEGISLATIVE REPORT**

**Possible Action:** Accept Report.

**13. COMMISSIONERS' REPORTS**

**14. NEWSPAPER ARTICLES / NEWSLETTERS**

14.1 CALAFCO Newsletter: The Sphere

**15. WRITTEN CORRESPONDENCE**

**16. PENDING APPLICATIONS / UPCOMING PROJECTS**

16.1 Annexation to West Valley Sanitation District (17655 Tourney Road, Los Gatos)

**17. ADJOURN**

Adjourn to regular LAFCO meeting on **Wednesday, February 10, 2010, 1:15 PM** at 70 West Hedding Street, San Jose.

Any disclosable public records related to an open session item on the agenda and distributed to all or a majority of the Commission less than 72 hours prior to that meeting are available for public inspection at the LAFCO Office at the address listed at the bottom of the first page of the agenda during normal business hours. In compliance with the Americans with Disabilities Act, those requiring accommodation for this meeting should notify the LAFCO Clerk 24 hours prior to the meeting at (408) 299-6415, or at TDD (408) 993-8272, indicating that the message is for the LAFCO Clerk.

LAFCO Meeting: October 14, 2009  
**TO:** LAFCO  
**FROM:** Neelima Palacherla, Executive Officer  
Dunia Noel, Analyst  
Emmanuel Abello, Clerk  
**SUBJECT:** 2008-2009 LAFCO Annual Report  
Agenda Item # 10

### **RECOMMENDATION**

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Accept the 2008-2009 Annual Report. (July 1, 2008 to June 30, 2009)

### **ANNEXATION & REORGANIZATION ACTIVITY**

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During Fiscal Year 2008-2009, LAFCO approved 3 reorganization proposals involving cities, two of them being annexations to two different cities and one involving detachment from a city. Additionally, LAFCO approved 4 reorganization proposals involving special districts, three of which required protest proceedings. Last year, LAFCO approved a total of 3 reorganization proposals, two being annexations to sanitary districts and one involving annexation to a city.

The number of city-conducted annexations that LAFCO staff processed this year totaled 5 proposals in three jurisdictions, as compared to 13 proposals in 6 cities the year before. The acreage annexed was 0.44 acre in Cupertino, 84 acres in Los Gatos and 7.28 acres in San Jose.

### **ISLAND ANNEXATIONS**

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As in the previous year, the City of San Jose was the only city to complete island annexations during Fiscal Year 2008-2009. The City annexed 6 unincorporated islands totaling 422.4 acres. These islands are larger than the islands that the City annexed in the previous phases and contain a significant number of parcels and residents.

Working with the City of San Jose and the County, LAFCO staff continued to help coordinate the overall island annexation program. LAFCO staff assisted and advised San Jose on their public outreach process, coordinated the preparation of maps and reports by the County Surveyor and Assessors' Offices, was available to attend island annexation community meetings and hearings, provided technical assistance on the island annexation process and law, and worked with and completed all necessary paperwork as required by the State Board of Equalization.

## **URBAN SERVICE AREA AMENDMENTS AND SPHERE OF INFLUENCE AMENDMENTS**

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LAFCO heard and approved an urban service area and sphere of influence amendment for the City of Campbell and the Town of Los Gatos that involved 1.4 acres of road right of way between the two cities' boundaries.

## **COMMISSION AND STAFF CHANGES**

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In January 2009, the County Board of Supervisors appointed Liz Kniss as the County's representative to LAFCO replacing Blanca Alvarado whose term on the County Board ended in December 2008. Commissioner Kniss's term on LAFCO will expire in May 2010 (as she is completing Commissioner Alvarado's unfinished term). The County also appointed George Shirakawa as the County's alternate representative to LAFCO replacing Pete McHugh whose term on the County Board also ended in December 2008. As Commissioner Shirakawa was completing Commissioner McHugh's unfinished term which ended in May 2009, the Board in 2009, reappointed Commissioner Shirakawa to another 4 year term ending in May 2013.

There is no change in the level of LAFCO staffing. All three positions (Executive Officer, Analyst and Clerk) are staffed at a full time level.

In February 2009, following a formal RFP process, the Commission retained Best Best & Keiger to provide general legal counsel services to LAFCO and appointed Mala Subramanian of Best Best & Keiger as the LAFCO Counsel.

Other staff who regularly assist with LAFCO work include Jack Schepens, the LAFCO Surveyor who is staffed through the County Surveyor's Office.

## **OTHER PROJECTS / STUDIES**

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### **San Martin Incorporation Proposal**

LAFCO received a petition and application for the incorporation of the Town of San Martin in February 2007. Since that time, LAFCO has been heavily involved in processing this complex application. Prior to July 2008, LAFCO retained Economic & Planning Systems (EPS) to prepare the Comprehensive Fiscal Analysis, Michael Brandman Associates (MBA) to conduct the environmental analysis and Best Best and Krieger as special counsel to LAFCO on the proposed incorporation.

#### **Revenue Neutrality Activities**

At the July LAFCO meeting, LAFCO Special Counsel provided their independent analysis of revenue neutrality issues and described LAFCO's discretionary authority in imposing terms and conditions for achieving revenue neutrality. In addition, staff and consultants provided responses to comments and questions regarding the Comprehensive Fiscal Analysis (CFA), and made further revisions to the report based on comments and new information available. Following review of the analysis, LAFCO requested the County to renegotiate with the proponents to reach agreement on revenue neutrality using a professional facilitator. The two parties

could not reach agreement during this second round of negotiations, and as a result LAFCO was required to impose terms and conditions for revenue neutrality. At the September 10, LAFCO meeting, staff presented various revenue neutrality mitigation options for the Commission's consideration and the Commission selected two potential options and directed staff to provide more information and a recommendation at the next meeting. At the October 1, 2008 LAFCO meeting, the Commission directed staff to revise the Public hearing Draft CFA to reflect its preferred revenue neutrality option and to prepare the EO Report for LAFCO public hearing on November 7<sup>th</sup>.

#### **LAFCO Public Hearing**

Staff released the EO Report and held an informational workshop in the community on November 3, 2008. At the November 7, 2008 LAFCO public hearing on the incorporation proposal, the Commission directed staff to draft a resolution for the next LAFCO meeting denying the incorporation for the proponent's failure to pay LAFCO fees pursuant to the fee agreement (between LAFCO and the proponents) and without considering the merits of the incorporation proposal. At the December 2008 LAFCO meeting, the Commission denied the incorporation proposal.

#### **Settlement Agreement between LAFCO and San Martin Neighborhood Alliance (SMNA), the proponents**

On February 2, 2009, SMNA filed a lawsuit against LAFCO in which it challenged LAFCO's review and processing of the San Martin Incorporation Proposal and SMNA's request for State Controller's review of the CFA. On February 17<sup>th</sup>, SMNA made a settlement offer to LAFCO, to which LAFCO made a counter offer. LAFCO approved the resultant settlement agreement at the June 3, 2009 LAFCO meeting.

#### **LAFCO Workshop on Annexations and Boundary Changes for Cities and Special Districts**

In March 2009, LAFCO staff conducted a practical workshop for staff from cities and special districts involved in processing annexations and dealing with associated service transfers. Over 35 staff from various County departments, five cities, five special districts, and two Board of Supervisors' Offices attended the 2½ hours workshop. In addition to providing an overview of LAFCO policies and the annexation process, LAFCO staff discussed when service transitions occur and when taxes transfer to the annexing agency. The meeting also provided an opportunity for attendees to network with staff from various agencies who are involved in the annexation process.

#### **Follow-up Meeting to Coordinate Service Transfers for San Jose Island Annexations**

As an outgrowth of the above mentioned workshop, LAFCO organized a follow-up meeting specific to coordinating annexations to San Jose. Over 25 staff from the City of San Jose, the County, and various special districts met in April 2009 to discuss the

annexation process and how coordination for the transfer of services between service providers, such as fire, law enforcement, sanitation, and waste collection, can be improved and how information can be shared. The meeting helped identify the key staff for the various agencies and allowed them to begin to network with each other. The meeting was particularly timely since San Jose is in the process of annexing several large populated unincorporated islands through the Island Annexation Program.

### **Work Plan for Comprehensive Update of LAFCO Policies**

In June 2009, LAFCO approved a work plan for reviewing and updating LAFCO's policies. The work plan included updating LAFCO's Service Review Policies, Island Annexation Policies, Incorporation Policies, Policies Pertaining to the Role of Commissioners, and Policies on Annexation/Reorganization for Cities and Special Districts. The work plan also included developing new policies on the retention of LAFCO records and indemnification of LAFCO for any litigation associated with LAFCO's review and approval of applications.

### **Adoption of LAFCO Indemnification Policy**

In June 2009, LAFCO adopted a policy that requires all applicants to indemnify LAFCO against any legal actions challenging the review or approval of the applicant's proposal by LAFCO. The policy shifts the burden to fund litigation defense from LAFCO and its funding agencies to the applicant. This policy is important because LAFCO often reviews and decides upon proposals such as annexations, urban service area amendments and incorporations that are of a complex and controversial nature.

### **Participation in CALAFCO Activities**

#### **CALAFCO Executive Board Member**

Commissioner Susan Vicklund Wilson, public member, is serving her third term on the CALAFCO Executive Board and is currently its Vice Chair. Commissioner Wilson participates on the CALAFCO Legislative Committee and currently chairs CALAFCO's Structural Change Subcommittee.

#### **2009 CALAFCO Annual Conference**

LAFCO staff and Commissioners Howe, and Wilson attended the 2008 CALAFCO Conference held in Los Angeles. LAFCO Clerk, Emmanuel Abello, prepared a video-montage and soundtrack for the conference.

#### **2009 CALAFCO Staff Workshop**

LAFCO staff attended the 2009 CALAFCO Staff Workshop in late April which was hosted by the San Luis Obispo LAFCO.

#### **CALAFCO University's SB 375 Workshop**

In March 2009, LAFCO staff and Alternate Commissioner Trumbull attended CALAFCO's workshop in San Jose on SB 375. The Workshop included a panel

discussion on how the implementation of SB 375 is envisioned under the law and how it will impact LAFCOs.

**CALAFCO University Workshop on Fire District Consolidation**

In June 2009, the LAFCO Executive Officer attended CALAFCO's workshop for LAFCO Commissioners, staff, and local agencies on fire district consolidation. This workshop was very timely as several fire protection districts and cities in the south county are exploring consolidation options and also because LAFCO is beginning to plan for the next countywide fire protection service review.

**Other Miscellaneous Projects and Activities**

**Participation in the Meetings of Santa Clara County Special Districts Association**

LAFCO staff continues to attend the quarterly meetings of the Santa Clara County Special Districts Association and provides an update to the association on LAFCO activities that are of interest to special districts.

**ATTACHMENT A: LAFCO APPLICATION PROCESSING ACTIVITY SUMMARY**



**LAFCO APPLICATIONS**  
 JULY 1, 2008 THROUGH JUNE 30, 2009

ITEM NO. 4  
 ATTACHMENT A

**CITY ANNEXATIONS/DETACHMENT**

**CITY CONDUCTED ANNEXATION**

City	Proposal Name	Date Recorded	Document Number	Acreage Approved
Cupertino	Baxter Avenue 08-01	11/19/2008	20049688	0.44
			<i>City Total</i>	<b>0.44</b>
Los Gatos	Englewood Avenue No. 7	5/26/2009	20265262	0.67
	Englewood Avenue No. 8	6/17/2009	20298609	0.17
			<i>City Total</i>	<b>0.84</b>
San Jose	Burbank No. 40	9/8/2008	1998344	2.78
	Monterey Park No. 112	7/10/2008	19914393	4.50
			<i>City Total</i>	<b>7.28</b>
<i>Total City Conducted Annexations</i>				<b>8.56 Acres</b>

**LAFCO-HEARD CHANGE OF ORGANIZATION**

Palo Alto	Palo Alto Reorganization 2008 (Former Los Altos Sewage Treatment Plant Site)	2/11/2009	20129923	13.60
			<i>City Total</i>	<b>13.60</b>
Morgan Hill	Munro Annexation 7	5/26/2009	20265262	20.00
			<i>City Total</i>	<b>20.00</b>
<i>Total LAFCO-Heard Change of Organization</i>				<b>33.60 Acres</b>

**ISLAND ANNEXATIONS**

San Jose	San Jose Pocket #25: Riverside No. 51	12/9/2008	20062308	3.40
	San Jose Pocket #36: Meridian No. 73	10/8/2008	20009509	147.00
	San Jose Pocket #37: Hamilton No. 59	10/8/2008	20009507	131.00
	San Jose Pocket #38: Burbank No. 41	10/8/2008	20009508	16.00

**LAFCO APPLICATIONS**  
 JULY 1, 2008 THROUGH JUNE 30, 2009

**ISLAND ANNEXATIONS** *(Continued)*

City	Proposal Name	Date Recorded	Document Number	Acreage Approved
	San Jose Pocket #39: Winchester No. 42	11/18/2008	20048500	85.00
	San Jose Pocket #40: Buena Vista No. 2	11/19/2008	20049689	40.00
<i>Total Island Annexations</i>				<b>422.40 Acres</b>

**CITY DETACHMENT**

Campbell	West Parr Avenue Detachment	6/3/2009	20331956 7/9/2009	0.28
<i>Total Detachment</i>				<b>0.28 Acre</b>

**SPECIAL DISTRICT ANNEXATIONS**

Special District	Proposal Name	LAFCO Action	Document # Date Recorded	Acreage
Central Fire Protection District	Central Fire Protection District: Arnerich-Wagner Road No. 1	12/3/2009 Protest Proceedings 02/10/2009	20173652 3/18/2009	42.5
<i>Total for CFPD</i>				<b>42.5</b>
West Valley Sanitation District	West Valley Sanitation District 2008-1 (Canon Drive)	4/16/2008 Protest Proceedings 06/19/2008	19916048 7/11/2008	32.4
	WVSD SOI Amendment & Annexation 2008-02 (Overlook Road)	12/3/2008 Protest Proceedings 02/10/2009	20173653 3/18/2009	50.13
	West Valley Sanitation District 2008-03 (Forrester Road)	2/4/2009	20129922 2/11/2009	1.82
<i>Total for WVSD</i>				<b>84.35</b>
<i>Total Special District Annexations</i>				<b>126.85 Acres</b>

# LAFCO APPLICATIONS

JULY 1, 2008 THROUGH JUNE 30, 2009

## URBAN SERVICE AREA AMENDMENT

Proposal Name	LAFCO Action / Date	Document #	Acreage	
		Date Recorded		
Campbell/ Los Gatos	Campbell USA/SOI Amendment 2009	Approved 6/3/2009	20331956 7/9/2009	1.40
			<i>Total USA Amendment</i>	1.40 Acres

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## SPHERE OF INFLUENCE AMENDMENT

Proposal Name	LAFCO Action / Date	Document #	Acreage	
		Date Recorded		
West Valley Sanitation District	WVSD SOI Amendment & Annexation 2008-02 (Overlook Road)	Approved 12/3/2008	20173653 3/18/2009	50.13
			<i>Total SOI Amendment</i>	50.13 Acres

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## CITY INCORPORATION

Proposal Name	LAFCO Action / Date
Incorporation of the Town of San Martin	Denied 12/3/2008

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**LAFCO Meeting: December 9, 2009**

**TO:** LAFCO

**FROM:** Neelima Palacherla, Executive Officer  
Dunia Noel, Analyst

**SUBJECT: Countywide Fire Service Review Request for Proposals**  
Agenda Item # 5

### **RECOMMENDATION**

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1. Authorize staff to issue a Request for Proposals (RFP) for a professional service firm to prepare a countywide fire protection service review.
2. Delegate authority to the LAFCO Executive Officer to enter into an agreement with the most qualified consultant in an amount not to exceed \$70,000 and to execute any necessary amendments subject to LAFCO Counsel's review and approval.

### **BACKGROUND**

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#### **Service Reviews and Sphere of Influence Updates**

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (California Government Code §56000 et seq.) requires that each LAFCO conduct service reviews prior to or in conjunction with the 5-year mandated sphere of influence (SOI) updates. A service review is a comprehensive review of municipal services in a designated geographic area in order to obtain information about services, evaluate provision of services, and recommend actions when necessary, to promote the efficient provision of those services. In Santa Clara County, service reviews are intended to serve as a tool to help LAFCO, the public and other agencies better understand the public service structure and to develop information to update the spheres of influence of the 29 special districts and 15 cities in the county.

In preparing for initiating LAFCO's second round of service reviews and sphere of influence updates, Santa Clara LAFCO at its October 2009 meeting established how the service reviews will be conducted and established priorities for their completion. The schedule calls for completion of 4 studies over the next three years. For the most part it is anticipated that these studies will be conducted by professional service firms under the direction of the LAFCO Executive Officer. The first priority, a review of countywide fire protection services in Santa Clara County, is the subject of this report.

## **COUNTYWIDE FIRE PROTECTION SERVICE REVIEW**

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### **Distribution of Draft Request for Proposals (RFP) for Affected Agencies' Review and Comment**

On November 6, 2009, LAFCO staff distributed a Draft RFP for the preparation of a Countywide Fire Service Review to affected cities and fire districts for their review and comment. LAFCO also requested their assistance in identifying potential qualified consultants and identifying any other issues surrounding the provision of fire protection services in the county. The deadline for providing LAFCO with written comments concerning the Draft RFP was December 2, 2009. Dale Foster, City of Gilroy Fire Chief, commented/suggested that the RFP and Scope of Services should include language indicating that the expectation is that the consultant firm will use "all available data sources such as department's ISO information should be used to update the last study information and not expect a department to fill out some lengthy list of questions with a short time line for completion." No other comments were received.

LAFCO staff has revised the Draft RFP and Scope of Services to address Fire Chief Foster's comment. Please see Attachment 1 for tracked changes.

LAFCO staff also discussed the service review workplan and the upcoming Countywide Fire Service Review, with the Santa Clara County / Cities Managers' Association on November 18<sup>th</sup> and with the Santa Clara County Fire Chiefs' Association on December 2<sup>nd</sup>. The Cities Managers' Association appointed Thomas Haglund, Gilroy City Manager, to represent their Association on the Countywide Fire Service Review Technical Advisory Committee (TAC). The County Fire Chiefs' Association appointed the following Fire Chiefs to represent their Association on the TAC:

- Steven Woodill (Cal Fire and South Santa Clara County Fire Protection District),
- Ken Waldvogel (Santa Clara County Fire Protection District), and
- Dale Foster (City of Gilroy).

In October, LAFCO appointed Commissioner Pete Constant to serve on the TAC.

### **Proposed Release of Final RFP for Countywide Fire Protection Service Review to Potential Firms**

Attached is the Final RFP for the Countywide Fire Protection Service Review. The Final RFP also includes a revised due date of Monday, January 11, 2010 in order to provide for a full 30-day circulation period. LAFCO staff is in the process of finalizing a list of firms that work in this field. Upon LAFCO authorization, staff will send the Final RFP to those firms and will post the RFP on the LAFCO website as well as on the CALAFCO website for other interested firms.

### **Firm Evaluation Criteria and Selection Process**

Firms will be selected for further consideration and follow-up interviews based on the following criteria:

- relevant work experience,
- the completeness of the responses,
- overall project approaches identified and
- proposed project budget

An interview/selection committee, that includes TAC representation, will conduct interviews and the most qualified firm will be selected based on the above evaluation criteria and reference checks. Following the selection of the most qualified firm, a final services agreement including budget, schedule, and final Scope of Services statement will be negotiated before executing the contract.

### **Countywide Fire Protection Service Review Timeline**

The following is a brief timeline for completing this Service Review:

- Release RFP: December 11, 2009
- Proposals due: January 11, 2010
- Firm Interviews and Selection of Firm: late January 2010
- Firm Starts Review: February 2010
- Complete Fire Service Review and SOI Updates: December 2010 LAFCO Meeting

### **ATTACHMENT**

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Attachment A: Final RFP including the Draft Scope of Services

**DRAFT REQUEST FOR PROPOSALS**  
**Countywide Fire Protection Service Review**

**I. Objective**

The Local Agency Formation Commission (LAFCO) of Santa Clara County is seeking proposals from professional service firms to prepare a Countywide Fire Protection Service Review. This work is to be completed in compliance with applicable California Government Code sections, local LAFCO policies and the latest available LAFCO Service Review Guidelines prepared by the Governor's Office of Planning and Research (OPR). The service reviews are intended to serve as a tool to help LAFCO, the public and other agencies better understand the public service structure and to develop information to update the spheres of influence of special districts and cities in the county. LAFCO is not required to initiate boundary changes based on service reviews. However, LAFCO, local agencies or the public may subsequently use the service reviews together with additional research and analysis where necessary, to pursue changes in jurisdictional boundaries or spheres of influence.

**II. Background**

The mandate for LAFCOs to conduct service reviews is part of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH Act), California Government Code §56000 et seq. LAFCOs are required to conduct service reviews prior to or in conjunction with Sphere of Influence updates and are required to review and update the Sphere of Influence for each city and special district as necessary, but not less than once every five years. LAFCO completed and adopted its first round of service reviews and sphere of influence updates prior to January 1, 2008, as required by State law. LAFCO must complete its next round of required service review and sphere of influence updates for all cities and special districts prior to January 1, 2013.

LAFCO of Santa Clara County is responsible for establishing, reviewing and updating Spheres of Influence for 44 public agencies in Santa Clara County (15 cities and about 29 special districts). LAFCO, at its October 2009 meeting, adopted revised policies for conducting service reviews (*Attachment 2*), established service review boundaries, and set priorities for the completion of LAFCO's second round of service reviews and sphere of influence updates. LAFCO's service reviews work plan calls for the completion of 4 studies over the next three calendar years. For the most part it is anticipated that these studies will be conducted by professional service firms under the operational direction of the LAFCO Executive Officer. One of the first priorities, a review of countywide fire protection service in Santa Clara County and sphere of influence updates for fire districts, is the subject of this Request for Proposal (RFP).

**III. Scope of Services**

A draft Scope of Services is enclosed with this RFP as Attachment 1. A final statement of services to be provided will be negotiated with the firm selected to conduct the service review and will be included as part of the professional services agreement.

#### **IV. Budget**

A final budget amount for this project will be negotiated with the firm selected for the work prior to reaching agreement. The anticipated project cost of the proposal should not exceed \$70,000.

#### **V. Schedule**

Timing is a concern to LAFCO because of the deadlines in the CKH Act and the need to address issues faced by some of the agencies or areas. It is anticipated that the firm will start work in **February 2010**. The Countywide Fire Protection Service Review and SOI Updates must be completed and adopted by LAFCO by mid December 2010. The final schedule for this project will be negotiated with the firm selected for the work prior to reaching an agreement.

#### **VI. Proposal Requirements**

Response to this RFP must include all of the following:

1. A statement about the firm that describes its history as well as the competencies and resumes of the principal and all professionals who will be involved in the work. This statement should describe the firm's level of expertise in the following areas:

##### **General Expertise**

- Familiarity with CKH Act, the role and functions of LAFCO, and the service review process
- Ability to analyze and present information in an organized format
- Ability to quickly interpret varied budget and planning documents
- Ability to facilitate and synthesize input from a variety of stakeholders
- Familiarity with public input processes and experience in handling the presentation and dissemination of public information for review and comment
- Experience in fostering multi-agency partnerships and cooperative problem-solving
- Ability to provide flexible and creative alternatives where necessary to resolve service and policy issues

##### **Fire Protection Service Expertise**

- Management level understanding of how fire protection services are financed and delivered
- Experience with operational aspects of fire protection service provision in California (fire departments, fire districts, and volunteer fire companies)
- Experience in fire protection service organization analysis, including evaluating government structure options (advantages and disadvantages of the consolidation or reorganization of service providers)



- Experience in the financial analysis of fire protection service delivery systems, including identifying financing constraints / opportunities and cost avoidance opportunities
  - Experience in evaluating fire protection service delivery systems, including performance measurements and benchmarking techniques
2. Identification of the lead professional responsible for the project and identification of the professional(s) who will be performing the day-to-day work.
  3. Identification of any associate consultant firms to be involved. If associate consultant firms are proposed, describe the work they will perform and include the same information for each as required for items 1 and 2 above.
  4. A statement of related experience accomplished in the last two years and references for each such project, including the contact name, address and telephone number.
  5. A statement regarding the anticipated approach for this project, explicitly discussing and identifying suggested changes to the draft Scope of Services (*Attachment 1*).
  6. Identification of any information, materials and/or work assistance required from LAFCO and / or involved fire agencies or departments to complete the project. The expectation is that the consultant will use all available data sources to develop/update information for agency profiles in an effort to minimize the workload for affected agencies.
  7. An overall project schedule, including the timing of each work task.
  8. Information about the availability of all professionals who will be involved in the work, including any associate consultants.
  9. The anticipated project cost, including:
    - a. A not-to-exceed total budget amount.
    - b. The cost for each major sub-task identified in the draft Scope of Services.
    - c. The hourly rates for each person who will be involved in the work, including the rates of any associate consultants.
  10. Comments about the draft services agreement (*Attachment 2*) specifically including the ability of the firm to meet the insurance requirements and other provisions.

## VII. Submission Requirements

DUE DATE AND TIME: ~~Monday, January 11~~ **Friday, January 8, 2010 at 5:00 PM**

Proposals received after this time and date may be returned unopened.

NUMBER OF COPIES:

6 original copies and 1 fully reproducible copy

DELIVER TO:

Neelima Palacherla  
LAFCO of Santa Clara County  
70 West Hedding Street, 11<sup>th</sup> Floor  
San Jose, CA 95110

*Note:* If delivery is to be in person please first call the LAFCO office (408-299-5127 or 5148) to arrange delivery time.

**VIII. Evaluation Criteria and Selection Process**

Firms will be selected for further consideration and follow-up interviews based on the following criteria:

- relevant work experience
- the completeness of the responses
- overall project approaches identified
- proposed project budget

A consultant selection committee will conduct interviews and the most qualified firm will be selected based on the above evaluation criteria and reference checks. Interviews will be held in mid-January 2010. The selection committee is expected to make a decision soon after. Following the selection of the most qualified firm, a final services agreement including budget, schedule, and final Scope of Services statement will be negotiated before executing the contract.

LAFCO reserves the right to reject any or all proposals, to issue addenda to the RFP, to modify the RFP or to cancel the RFP.

**IX. LAFCO Contact**

Neelima Palacherla, Executive Officer  
LAFCO of Santa Clara County  
Voice: (408) 299-5127  
Fax: (408) 295-1613  
Email: [neelima.palacherla@ceo.sccgov.org](mailto:neelima.palacherla@ceo.sccgov.org)

**X. Attachments**

1. Draft Scope of Services (*Attachment 1*)
2. Draft Professional Service Agreement and insurance obligations (*Attachment 2*)  
(*to be included in Final RFP only*)—

**XI. Reference Information**

For general information about LAFCO of Santa Clara County, or to view LAFCO's Service Review Policies or the Countywide Fire Service Review Report (adopted in 2004), please refer to the LAFCO website ([www.santaclara.lafco.ca.gov](http://www.santaclara.lafco.ca.gov))

For the Service Review Guidelines, issued by the Governor's Office of Planning and Research, please refer to their website

(<http://www.opr.ca.gov/planning/publications/MSRGuidelines.pdf>)

(<http://www.opr.ca.gov/planning/publications/MSRAppendices.pdf>)

## ~~DRAFT SCOPE OF SERVICES~~

### **Countywide Fire Protection Service Review in Santa Clara County**

LAFCO of Santa Clara County will conduct a service review of fire protection services provided within Santa Clara County. California Government Code section 56430 requires LAFCO to conduct the review in order to develop information for updating spheres of influence. The statute requires LAFCO to prepare and adopt a written statement of determination for each of the following considerations:

- 1) Growth and population projections for the affected area.
- 2) Present and planned capacity of public facilities and adequacy of public services, including infrastructure needs or deficiencies.
- 3) Financial ability of agencies to provide services.
- 4) Status of, and opportunities for, shared facilities.
- 5) Accountability for community service needs, including governmental structure and operational efficiencies.
- 6) Any other matter related to effective or efficient service delivery, as required by commission policy.

The report will include a recommendation regarding each fire district's sphere of influence boundary. California Government Code section 56425 requires LAFCO, when determining the sphere of influence of each local agency, to prepare and adopt a written statement of determination for each city and special districts regarding the following considerations:

- 1) The present and planned land uses in the area, including agricultural and open-space lands Growth and population projections for the affected area.
- 2) The present and probable need for public facilities and services in the area.
- 3) The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide.
- 4) The existence of any social or economic communities of interest in the area if the commission determines that they are relevant to the agency Status of, and opportunities for, shared facilities.
- 5) The nature, location, and extent of any functions or classes of services provided by existing districts.

## **Service Review Tasks Overview**

The Countywide Fire Protection Service Review will be conducted in accordance with LAFCO policies adopted by the Commission and the service review guidelines developed by the Governor's Office of Planning and Research (OPR) where feasible. Preparation of the service review will include the following steps, although other activities may be necessary:

### **1. Data Collection and Review**

- Develop questionnaire relating to the six evaluation categories for service review
- Identify appropriate standards to be used for service evaluation, as necessary
- Review questionnaire with LAFCO staff and TAC
- Collect information through interviews, meetings, surveys and / or research. All available data sources, such as agency's ISO information, should be used to gather/update the information.
- Compile information in a database
- Verify compiled information with agencies

Work Products: Consultant must deliver to LAFCO staff complete information for each agency.

### **2. Data Analysis**

- Analyze data and prepare preliminary findings based on standards, where appropriate
- Present to and discuss the preliminary findings with LAFCO staff
- Present preliminary findings to TAC/agencies staff

Work Products: Consultant must deliver preliminary analysis and findings to LAFCO staff

### **3. Draft Service Review Report**

- Prepare a draft Service Review report including required findings for public review and comment
- Present the draft service review report to LAFCO at public hearing

Work Products: Consultant must deliver to LAFCO a MS Word formatted version, a PDF formatted version, and 2 hard copies of the draft report.

### **4. Final Service Review Report**

- Respond to comments and prepare a final service review report including required findings
- Present the final service review to LAFCO at public hearing for adoption

Work Products: Consultant must deliver to LAFCO a MS Word formatted version, a PDF formatted version, and 5 hard copies of the final report.

## **Overview of Fire Protection Service in Santa Clara County**

There are a total of 12 agencies providing fire protection services in Santa Clara County. Seven of the county's 15 cities provide their own fire protection services. Four special districts provide fire protection services to various parts of the County. These agencies coordinate fire protection services with each other through a system of contracts, mutual aid agreements, automatic aid agreements, and boundary drop agreements.

In addition, the NASA Ames Fire Department is responsible for fire protection service at NASA Ames Research/Moffett Airfield. Stanford University contracts with the City of Palo Alto for fire suppression services for Stanford University facilities and lands. The California Department of Forestry (CDF) provides fire protection services for wild land fires during the "fire season" to some of the unincorporated areas within the county. Several volunteer fire crews/companies operate independent of these agencies within the county.

## **Identification of Service Providers**

Within Santa Clara County, the following agencies provide fire protection services:

1. Santa Clara County Central Fire Protection District
2. South Santa Clara County Fire Protection District
3. Los Altos Hills County Fire District
4. Saratoga Fire Protection District
5. City of Milpitas Fire Department
6. City of Santa Clara Fire Department
7. City of San Jose Fire Department
8. City of Sunnyvale Fire Department
9. City of Gilroy Fire Department
10. City of Palo Alto Fire Department
11. City of Mountain View Fire Department
12. California Department of Forestry

NASA Ames Fire Department provides fire service to NASA Ames Research/Moffett Airfield. Additionally, the following volunteer fire crews/companies operate independent of fire protection agencies within the county:

- Stevens Creek Volunteer Fire Company
- Ormsby Volunteer Fire Brigade

- Spring Valley Volunteer Fire Department
- Casa Loma Volunteer Fire Association
- Uvas Volunteer Fire Department

### **Potential Fire Protection Service Issues and Topics**

The following is a working list of fire protection service issues and topics that have been identified to date:

- Funding and providing fire and rescue services to the unprotected areas of the County (i.e. areas not located within any fire district's/agency's service area)
- Issues regarding a fire district contracting with another fire district for services
- Potential regional fire protection service models for South County region
- Status, roles, and oversight of volunteer fire protection groups in the county

**SERVICES AGREEMENT BETWEEN  
THE LOCAL AGENCY FORMATION COMMISSION  
OF SANTA CLARA COUNTY AND \_\_\_\_\_  
FOR COUNTYWIDE FIRE PROTECTION SERVICE REVIEW AND SPHERE OF  
INFLUENCE UPDATES**

This Agreement (“Agreement”) is made effective \_\_\_\_\_, by and between the Local Agency Formation Commission of Santa Clara County (“LAFCO”) and \_\_\_\_\_ (“Contractor”) to provide consulting services for the development of a countywide service review for fire protection services within Santa Clara County and for the sphere of influence updates for the four special districts providing fire protection services in the county.

WHEREAS, pursuant to the Cortese-Knox-Hertzberg Act, Government Code section 56000 et seq., LAFCO is an independent body; and

WHEREAS, LAFCO needs assistance with the development of countywide service review of fire protection services; and

WHEREAS, Contractor has experience and expertise necessary to provide such services; and

WHEREAS, at the December 9, 2009 meeting of LAFCO, the Commission delegated authority to the LAFCO Executive Officer to execute an agreement with the most qualified consultant for preparation of the countywide fire service review;

THEREFORE, the parties agree as follows:

**1. Nature of Services.**

Contractor will provide to LAFCO the services described in Exhibit A, Scope of Services, which is attached hereto and incorporated herein by this reference.

**2. Term of Agreement.**

This Agreement is effective from the date of final execution, to and including \_\_\_\_\_, unless terminated earlier in accordance with Section 4.

**3. Compensation.**

A. Contractor will be compensated for services provided under this Agreement in accordance with the Rate Schedule included in Exhibit A2. Contractor will complete all the work and tasks described in Exhibit A for an amount not to exceed \$70,000. The contractor shall be paid based on the rate schedule indicated in Exhibit A2, but compensation and expenses shall not exceed the maximum compensation stated herein.

B. Contractor will provide LAFCO with monthly invoices which shall be accompanied by a detailed summary of activities undertaken over the course of the preceding month.

**4. Termination.**

A. Termination Without Cause. Either party may terminate this Agreement without cause by giving the other party thirty (30) days written notice.

B. Termination for Cause. LAFCO may terminate this Agreement for cause upon written notice to Contractor. For purposes of this Agreement, cause includes, but is not limited to, any of the following: (1) material breach of this Agreement by Contractor, (b) violation by Contractor of any applicable laws, (c) assignment by Contractor of this Agreement without the written consent of LAFCO pursuant to Section 13, or (d) failure to provide services in a satisfactory manner. Such notice shall specify the reason for termination and shall indicate the effective date of such termination.

C. In the event of termination, Contractor will deliver to LAFCO copies of all reports and other work performed by Contractor under this Agreement whether complete or incomplete, and upon receipt thereof, Contractor will be compensated based on the completion of services provided, as solely and reasonably determined by LAFCO.

**5. Project Managers; Substitution**

A. Contractor designates \_\_\_\_\_ as the Contractor's Project Manager for the purpose of performing the services under this Agreement. \_\_\_\_\_ will serve as day-to-day contact for LAFCO and work directly with staff.

B. LAFCO designates the LAFCO Executive Officer as its Project Manager for the purpose of managing the services performed under this Agreement.

C. Contractor may not substitute anyone other than \_\_\_\_\_ to serve as Project Manager without the written permission of the LAFCO Executive Officer or her authorized representative. Any such substitution shall be with a person or firm of commensurate experience and knowledge necessary for the tasks to be undertaken.

**6. Conflicts of Interest.**

In accepting this Agreement, Contractor covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services.

Contractor further covenants that, in the performance of this Agreement, it will not employ any contractor or person having such an interest.

**7. Indemnification/Insurance.**

Contractor's indemnification and insurance obligations with respect to this



Agreement are set forth in Exhibit B, attached hereto and incorporated herein by this reference.

**8. Compliance with all Laws.**

Contractor shall, during the term of this contract, comply with all applicable federal, state, and local rules, regulations, and laws.

**9. Maintenance of Records.**

Contractor shall maintain financial records adequate to show that LAFCO funds paid under the contract were used for purposes consistent with the terms of the contract. These records shall be maintained during the term of this contract and for a period of three (3) years from termination of this contract or until all claims, if any, have been resolved, whichever period is longer, or longer if otherwise required under other provisions of this contract.

**10. Nondiscrimination.**

Contractor will comply with all applicable Federal, State, and local laws and regulations including Santa Clara County's equal opportunity requirements. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101 and 1102. Contractor will not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor will Contractor discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

**11. Notices.**

All notices required by this Agreement will be deemed given when in writing and delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other party at the address set forth below or at such other address as the party may designate in writing in accordance with this section:

To Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To LAFCO:               LAFCO Executive Officer  
70 West Hedding Street, 11<sup>th</sup> Floor  
San Jose, CA 95110

**12. Governing Law.**

This Agreement has been executed and delivered in, and will be construed and enforced in accordance with, the laws of the State of California. Venue shall be in Santa Clara County.

**13. Assignment.**

Contractor has been selected to perform services under this Agreement based upon the qualifications and experience of Contractor's personnel. Contractor may not assign this Agreement or the rights and obligations hereunder without the specific written consent of LAFCO. Any attempted assignment or subcontract without prior written consent will be null and void and will be cause, in LAFCO's sole and absolute discretion, for immediate termination of the Agreement.

**14. Relationships of Parties; Independent Contractor.**

Contractor will perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of LAFCO. None of the provisions of this Agreement is intended to create, nor shall be deemed or construed to create, any relationship between the parties other than that of independent parties contracting with each other for purpose of effecting the provisions of this Agreement. The parties are not, and will not be construed to be in a relationship of joint venture, partnership or employer-employee. Neither party has the authority to make any statements, representations or commitments of any kind on behalf of the other party, or to use the name of the other party in any publications or advertisements, except with the written consent of the other party or as is explicitly provided herein. Contractor will be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any.

**15. Entire Agreement.**

This document represents the entire Agreement between the parties with respect to the subject matter hereof. All prior negotiations and written and/or oral agreements between the parties with respect to the subject matter of this Agreement are merged into this Agreement.

**16. Amendments.**

This Agreement may be amended only by an instrument signed by the parties.

**17. Counterparts.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same

instrument.

**18. Severability.**

If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

**19. Waiver.**

No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing, and shall apply to the specific instance expressly stated.

**20. Ownership of Materials and Confidentiality.**

A. Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for LAFCO to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Contractor under this Agreement ("Documents & Data"). Contractor shall require all sub consultants to agree in writing that LAFCO is granted a non-exclusive and perpetual license for any Documents & Data the sub consultant prepares under this Agreement. Contractor represents and warrants that Contractor has the legal right to license any and all Documents & Data. Contractor makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Contractor or provided to Contractor by LAFCO. LAFCO shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at LAFCO's sole risk.

B. Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor. Such materials shall not, without the prior written consent of Contractor, be used by Contractor for any purposes other than the performance of the Agreement. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Agreement. Nothing furnished to Contractor which is otherwise known to Contractor or is generally known, or has become known, to the related industry shall be deemed confidential. Contractor shall not use LAFCO's name or insignia, photographs of the Services, or any publicity pertaining to the Services in any magazine, trade paper, newspaper, television or

radio production or other similar medium without the prior written consent of LAFCO.

C. Confidential Information. LAFCO shall refrain from releasing Contractor's proprietary information ("Proprietary Information") unless LAFCO's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case LAFCO shall notify Contractor of its intention to release Proprietary Information. Contractor shall have five (5) working days after receipt of the Release Notice to give LAFCO written notice of Contractor's objection to LAFCO's release of Proprietary Information. Contractor shall indemnify, defend and hold harmless LAFCO, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. LAFCO shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Contractor fails to fully indemnify, defend (with LAFCO's choice of legal counsel), and hold LAFCO harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that LAFCO release such information.

**IN WITNESS WHEREOF**, LAFCO and Contractor have executed this Agreement as follows:

LAFCO

\_\_\_\_\_

\_\_\_\_\_  
Neelima Palacherla  
LAFCO Executive Officer

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM AND LEGALITY:**

\_\_\_\_\_  
Mala Subramanian, LAFCO Counsel

Exhibits to this Agreement:

- Exhibit A – Scope of Services
- Exhibit A2 – Rate Schedule
- Exhibit B – Indemnification and Insurance

INSURANCE REQUIREMENTS FOR STANDARD SERVICE CONTRACTS  
BETWEEN \$50,001 AND \$100,000

Indemnity

During the term of this contract, the Contractor shall indemnify, defend, and hold harmless the Local Agency Formation Commission of Santa Clara County (hereinafter "LAFCO"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by LAFCO. It is the intent of the parties to this Agreement to provide the broadest possible coverage for LAFCO. The Contractor shall reimburse LAFCO for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the LAFCO under this Agreement.

Insurance

Without limiting the Contractor's indemnification of LAFCO, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the LAFCO Executive Officer, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by LAFCO Executive Officer. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policyholder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the LAFCO Executive Officer.

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the LAFCO Executive Officer.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:

- a. Each occurrence - \$1,000,000
  - b. General aggregate - \$1,000,000
  - c. Products/Completed Operations aggregate - \$1,000,000
  - d. Personal Injury - \$1,000,000
2. General liability coverage shall include:
- a. Premises and Operations
  - b. Products/Completed
  - c. Personal Injury liability
  - d. Severability of interest
3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:
- Additional Insured Endorsement, which shall read:
- “LAFCO, members of LAFCO, employees of LAFCO, County of Santa Clara, members of the Board of Supervisors of the County of Santa Clara, officers employees of the County of Santa Clara; individually and collectively, as additional insureds.”
- Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by LAFCO, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy.
4. Automobile Liability Insurance
- For bodily injury (including death) and property damage which provides total limits of not less than one hundred thousand dollars (\$100,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.
5. Workers' Compensation and Employer's Liability Insurance
- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
  - b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

E. Special Provisions

The following provisions shall apply to this Agreement:

- 1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the LAFCO Executive Officer or insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
- 2. LAFCO acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by LAFCO upon satisfactory evidence of financial capacity. Contractors obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.

3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.
4. LAFCO reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.

LAFCO Meeting: December 9, 2009  
TO: LAFCO  
FROM: Neelima Palacherla, Executive Officer  
SUBJECT: **Comments on Proposed Regional Structure for CALAFCO  
Agenda Item # 6**

### **Staff Recommendation**

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Consider CALAFCO's proposal for creating regions and provide comments to the CALAFCO Board and Executive Director.

### **CALAFCO Board Proposal**

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The CALAFCO Board of Directors has discussed and put forth a proposal that creates regions within CALAFCO with the goal of facilitating more interaction amongst LAFCOs regionally and as a means of encouraging more LAFCOs to participate in CALAFCO activities. The CALAFCO Board is seeking input from all LAFCOs regarding this proposal and is specifically requesting a response to the following questions:

- Does having a regional forum make sense for your LAFCO?
- What are some of the common interests you believe you share with your neighboring LAFCOs?
- Would you participate in the occasional regional meetings?
- Which LAFCOs would you want to see included in your region?

Attachment A includes CALAFCO Board's proposal to establish regions.

### **Discussion / Comments**

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We believe CALAFCO's proposal to create regions to encourage participation and communication between LAFCOs and CALAFCO is very reasonable and makes sense for our LAFCO. In fact, in the Bay Area, an informal system on these lines currently exists, where staff from the 9-county Bay Area region which includes Santa Clara, San Mateo, San Francisco, Contra Costa, Alameda, Napa, Solano, Sonoma and Marin LAFCOs meet a few times throughout the year. These meetings have been excellent forums for staff to discuss issues of common interest to our LAFCOs and to meet with our regional planning agency, ABAG, on population projections, regional housing needs assessments and SB 375 among other issues. This has allowed us to establish good working relationships with our neighboring LAFCO staff and with the regional



planning agency. CALAFCO's proposal for regions would extend this opportunity to commissioners in the region and provide staff and commissioners with a formal forum for regional communication and problem-solving, and a channel for communicating the regional perspective and unique interests of the region to the statewide association / legislature. Additionally, such regional focus would likely provide more opportunities for CALAFCO sponsored activities locally or in proximity to the Bay Area, encouraging more commissioner involvement in such events.

Our involvement with the 9-county Bay Area LAFCOs is based for the most part on our ties and interaction with ABAG on RHNA, SB 375 and other issues of commonality such as agricultural / open space preservation, growth, land use patterns etc. The upcoming implementation of SB 375 will only mean that we will be working very closely with these LAFCOs and ABAG. In addition to the 9-county Bay Area region, our LAFCO has regular interactions or common issues with Santa Cruz and San Benito counties on topics such as agricultural / open space preservation, water quality/ supply issues, flood protection, watershed issues, fire protection, and land use issues among others. Also, some of the special districts providing services in our county have boundaries that extend into these neighboring counties, thus requiring coordination with their LAFCOs.

CALIFORNIA ASSOCIATION OF  
LOCAL AGENCY FORMATION  
COMMISSIONERS

**CALAFCO**

**CALAFCO Annual Business Meeting**

29 October 2009

**Agenda Item No. 4.1**

**MEMORANDUM**

**To:** CALAFCO Members  
**From:** William Chiat, Executive Director  
**Date:** 29 October 2009  
**RE:** **Discussion of Establishment of Regional Structure for CALAFCO**

**RECOMMENDATION**

1. Discuss the policy and strategy adopted by the CALAFCO Board of Directors and provide input to the Board on strategic implementation of the regional structure.

**DISCUSSION**

**Background**

The CALAFCO Board of Directors has long believed that one of the most valuable services provided by the association is the facilitation of communications and sharing of information among its members. At each of the last four biannual strategic retreats the Board has identified communications and facilitation of regional meetings as an important goal of the association.

On 12 February 2009 the Board held its most recent Strategic Planning Workshop in Irvine California. Based on input from a number of member LAFcos, a key issue the Board discussed was how to best structure the association to both facilitate communication among members, and also assure that the many perspectives on LAFco policies and issues are heard and considered by the Board of Directors and its key policy and legislative committees.

At its 13 February 2009 meeting the Board established a Structural Options Committee to consider various ways the association could be structured to encourage more communication among members, strengthen the association, and provide a vehicle for sharing different perspectives on LAFco issues. The committee included Board Members Susan Vicklund Wilson (Santa Clara), Simón Salinas (Monterey), Cheryl Brothers (Orange), and Jerry Gladbach (Los Angeles). Executive Director Bill Chiat and Legal Counsel Clark Alsop provided staff support. The Committee met several times and presented an initial recommendation to the Board on 15 May 2009 in Sacramento. The Board provided significant feedback on the ideas presented by the Committee. The Committee met again and formulated a revised proposal. That proposal was presented to the Board on 7 August 2009. At that meeting the Board of Directors unanimously adopted the Committee recommendation and directed staff to share the strategy and policy with all Member LAFcos in anticipation of a discussion on the issue at the Annual Business Meeting in October.

### **Adopted Recommendation and Implementation**

The recommendation adopted by the Board is captured in the attached policy statement and strategic plan. The plan calls for a 14-month implementation of the regional structure.

Following input from members in October, the Board may prepare revisions to the plan and begin work on establishing regional boundaries. Preliminary regions will be sent to members for review and input next spring. The membership will vote on the ultimate structure and By-law change at the 2010 Annual Business Meeting in Palm Springs. Regional meetings will begin at the 2010 conference.

The attached policy statement discussed the purposes and benefits the Board has identified for regions. Ultimately the Board envisions that the regions could meet three times a year to share information and resources, and provide input to CALAFCO: 1) commissioners and staff at the annual CALAFCO Conference; 2) staff at the CALAFCO Staff Workshop; and 3) a third meeting in the region of commissioners and staff. Regions may hold additional meetings as desired by the members.

### **Member LAFCo Input Sought**

The Board has asked that all member LAFCos consider this approach and provide input to the Board at the Annual Business meeting. The Board will use the input to further refine the regional structure policy and implementation. Among the questions the Board would like input:

- ◆ Does having a regional forum make sense for your LAFCo?
- ◆ What are some of the common interests you believe you share with your neighboring LAFCos?
- ◆ Which LAFCos do you work – or would like to work – more closely with?
- ◆ As the Board works to establish regions, which LAFCos would you want to see included in your region.

### **ATTACHMENTS**

1. Policy Statement
2. Strategic Approach for Implementation
3. Proposed language for By Law Change

## **Policy Statement on Creating Regions within CALAFCO**

CALAFCO Board of Directors – 7 August 2009

The Board has concluded after several months of review that creating a regional approach with our member LAFcos would strengthen and unify CALAFCO, thus increasing our productivity and presence with our individual members and within the legislative process. Our Board has continually verbalized and promoted structuring regions within CALAFCO in which individual LAFcos could meet and share common interests, issues, and resources. We have determined that there are significant benefits to formalizing regions.

Benefits of a regional approach include but are not limited to:

### **Communication:**

- ♦ Promotes more efficient and effective communication.
- ♦ Provides a vehicle to give input on policy and legislative issues to the Board and the Legislative Committee, which would enhance communications with legislative representatives.
- ♦ Formalizes a structure and forum at the Commissioner level for local LAFcos to address policies which may influence other LAFcos.
- ♦ Provides various viewpoints and different perspectives to assist in making better decisions.

### **Economical:**

- ♦ Ease of travel within a region may invite more participation in regional approaches to common interests.
- ♦ Increased opportunity for LAFcos in each region to share resources and provide more economical approaches to various matters. e.g., a group of neighboring LAFcos recently consolidated a RFP for audit services thereby reducing their costs.

### **Commonality Geographically:**

- ♦ Local and neighboring LAFcos could specifically target their common interests.
- ♦ Localized issues can be discussed, addressed, and resolved with neighboring LAFcos.
- ♦ Recognition of geographic issues and differences impacting LAFcos
- ♦ Consistency with creation of regional transportation plans which will be acted upon regionally.
- ♦ Strengthens LAFcos in areas without COGs .

### **Education of Legislature:**

- ♦ Legislators will recognize that CALAFCO represents all areas, regions of the state

### **Succession and Leadership:**

- ♦ Increased involvement in LAFco by our members and more immediate accountability of Board members to the membership.
- ♦ Provides a mechanism for succession within CALAFCO generating growth and interest of board representation.
- ♦ With each region providing a staff person for CALAFCO, the volunteer workload would be balanced and more evenly distributed throughout the state and provide a mechanism for development and succession for future staff. The Board noted that several LAFco staff members have greatly assisted CALAFCO, but many of same will be retiring within the next few years.

# Strategic Plan for Regional Implementation

Adopted by the CALAFCO Board of Directors on 7 August 2009

- GOAL** Structure member LAFCoS into geographic regions to encourage communication among LAFCo commissioners and staff, increase involvement in Association activities and policies, collaborate on inter-LAFCo policies and issues, share resources, and provide regional input to the Board on legislative issues and regional policy issues.
- ACTION 1** Adopt a policy statement on the value of regions to the members and the Association, and signal the intent of the Board to formally establish CALAFCO regions.  
*Timeframe:* Draft statement to be presented to Board for adoption on 7 August 2009\*.
- ACTION 2** Amend the 2009-2011 CALAFCO Strategic Plan to reflect the revised strategic goal and the five actions described in this letter.  
*Timeframe:* Draft strategy to be presented to Board for adoption on 7 August 2009\*.
- ACTION 3** Amend the CALAFCO Policy Manual to accomplish two things:  
**Action 3a:** Define and increase the number of staff officers, and require that one staff officer be selected from each region.  
This would add additional Deputy Executive Officers to the CALAFCO staff. Having a staff officer from each region would provide a resource to organize regional meetings; help identify Board candidates for the Recruitment Committee; be a voice on regional issues to Association staff; and provide professional growth opportunities for staff from around the state. The new officer(s) could be added as soon as 2010 once the Board has adopted the preliminary boundaries. This would add a \$2,000/year stipend to the CALAFCO budget for each additional staff officer.  
**Action 3b:** Clarify "geographic diversity" in the nominations procedure.  
This would specify that Nominations Committee assure that candidates are representative of all the regions. This could be done for the 2010 elections using the adopted preliminary regional boundaries.  
*Timeframe:* Draft policy changes presented to Board for adoption on 7 August 2009\*. Additional staff would be added in 2010 once the Board adopts preliminary boundaries. Nominations representative of regions could apply to the 2010 elections.
- ACTION 4** Discussion of proposal to create regions and the benefits and intent of regions to be discussed at CALAFCO Annual Business Meeting on 29 October 2009.  
Information packets will be sent to each member in advance of the meeting. Packet will include cover letter, policy, strategy and actions, initial by-law language and process for input and creation of regions. Discussion will be held at annual meeting.  
*Timeframe:* Packet to be distributed to members by 29 August 2009. Discussion and any action item on 29 October 2009.
- ACTION 5** Establish regions and change the Association By-Laws  
Based on input from members at the 2009 Annual Meeting, the Board will establish preliminary regions for member review and comment. Board will finalize recommended

changes to By-laws to establish the regions and adopt the necessary policies to identify the members and operations of each region.

**Timeframe:** Preliminary regions sent to member for comment by February, 2010. Proposed policies adopted by August, 2010. By-law change to implement regions considered at Annual Meeting on 7 October 2010 in Palm Springs.

\* Adopted by Board on 7 August 2009

## **Draft Amendments to Association By-Laws**

*For discussion purposes only; consideration of by-law changes anticipated at 2010 Annual Meeting in Palm Springs*

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2.1 **Classification and Qualifications of Members.** The Corporation shall have three (3) classes of members as follows: Member LAFCOs; Officers of Member LAFCOs; and Associate Members. Member LAFCOs shall be any local agency formation commission ("LAFCO"), which have paid the required annual membership dues and assessments and have indicated by appropriate action their desire to join the Corporation. Officers of Member LAFCOs shall be any regular or alternate Commissioner, executive officer, deputy executive officer, legal counsel, or deputy legal counsel of any LAFCO in good standing as a Member LAFCO. Associate Members of the Corporation shall be any member of the public, a government agency, a business, or an educational institution, either who or which has paid the required annual membership dues and assessments and has indicated by appropriate action its desire to join the Corporation. Notwithstanding any other provision in these Bylaws to the contrary, the terms generally meaning "approval of members or the membership" or "ratification by the members or membership" or "adopted by the members or membership" shall mean such approval or ratification or adoption by members eligible to vote.

2.1.1 Member LAFCOs shall be organized into XXXX geographic regions to facilitate interaction and communication among member LAFCOs, share resources, and provide increased opportunity for Member LAFCO input to the Board of Directors on regional and statewide issues and Corporation activities.

2.1.2 The boundaries of the regions shall be determined by action of the Board of Directors.

2.1.3 The regions shall not have authority to act independently of the Corporation.

## Member Input on Regional Structure for CALAFCO

Member LAFCo: \_\_\_\_\_

Which LAFCos would you want to see included in a region with you? Please highlight those LAFCos on the map below.



Please return to Bill Chiat or SR Jones

# Resolution of Commendation

WHEREAS, John Howe served on the Local Agency Formation Commission of Santa Clara County (LAFCO) as Cities Representative from May 2004 to December 2009 and will soon complete his second and final term on the Sunnyvale City Council; and

WHEREAS, John Howe has committed himself to uphold the principles of LAFCO to prevent urban sprawl, to promote orderly growth and development, to ensure the efficient delivery of services, and to protect agricultural land and open space resources; and

WHEREAS, John Howe has served on several LAFCO sub-committees involving the preparation of LAFCO municipal service reviews, and the development of the LAFCO annual budget and has played a significant role in LAFCO's adoption of its agricultural mitigation policies and LAFCO's very successful inter-jurisdictional effort to annex the remaining unincorporated islands in Santa Clara County into cities; and

WHEREAS, John Howe has demonstrated thought and insight in his role as a Commissioner and has added a unique perspective to LAFCO by virtue of his tenure with the Sunnyvale City Council, and participation in numerous local and regional organizations; and

WHEREAS, LAFCO recognizes the contributions of John Howe to local government in Santa Clara County, including his tenure with the Sunnyvale City Council since 2002 with a term as Mayor, as well as his leadership roles on the Santa Clara County Cities Association's Joint Economic Development Policy Committee; the Recycling and Waste Reduction Commission of Santa Clara County; U.S. Conference of Mayors, Criminal and Social Justice Standing Committee; the Santa Clara Valley Transportation Authority Policy Advisory Committee; and Local Reuse Authority Citizens Advisory Committee for Orizuka Air Force Base;

NOW, THEREFORE, BE IT RESOLVED, that the Local Agency Formation Commission of Santa Clara County does hereby commend and honor

**JOHN HOWE**

and expresses its sincere gratitude and appreciation for his 5 years of dedicated service to LAFCO and extends its best wishes to John as he embarks on his new journey.

PASSED AND ADOPTED, this Ninth Day of December, Two Thousand and Nine, by unanimous vote.

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Fete Constant  
Member

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Donald F. Gage  
Member

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Liz Kniss  
Member

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Susan Vicklund Wilson  
Vice Chairperson



**2010 SCHEDULE OF LAFCO MEETINGS AND  
APPLICATION FILING DEADLINES**

<b>LAFCO MEETING</b>	<b>DEADLINE TO FILE APPLICATION</b>
Wednesday February 10, 2010	December 16, 2009
Wednesday April 14, 2010	February 17, 2010
Wednesday June 9, 2010	April 21, 2010
Wednesday August 11, 2010	June 16, 2010
Wednesday October 13, 2010	August 18, 2010
Wednesday December 8, 2010	October 20, 2009

**TIME OF MEETINGS:** 1:15 PM

**LOCATION OF MEETINGS:** County Government Center  
70 West Hedding Street, 1st Floor  
San Jose, CA 95110

**FILING LOCATION:** LAFCO Office  
70 West Hedding Street, 11th Floor  
San Jose, CA 95110  
(408) 299-6415

Meeting Date: December 9, 2009

**TO:** LAFCO

**FROM:** Neelima Palacherla, Executive Officer

**SUBJECT:** Appointment of 2010 Chairperson and Vice Chairperson  
Agenda Item # 10

**RECOMMENDATION**

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Per the rotation schedule, appoint Commissioner Susan Vicklund-Wilson, the public representative, as Chairperson for 2010, and Commissioner Don Gage, the County representative, as the Vice Chairperson.

**DISCUSSION**

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Appointment of Chair and Vice Chair is made on a calendar year basis. LAFCO's rotation schedule is as follows:

- Cities representative
- County representative
- San Jose representative
- County representative
- Public representative

The Chair for the current year is Commissioner John Howe, cities representative and the Vice Chair is Commissioner Susan Vicklund Wilson, public representative. Please note that the chair and vice-chair positions were switched for 2009 to allow Commissioner Howe to serve as chair this year. Therefore in accordance with the regular rotation schedule, the public representative should be appointed as the 2010 Chairperson and the County representative as the Vice Chairperson.

LAFCO Meeting: December 9, 2009  
TO: LAFCO  
FROM: Neelima Palacherla, Executive Officer  
Dunia Noel, LAFCO Analyst  
**SUBJECT: Executive Officer's Report  
Agenda Item # 11**

### **11.1 Report on 2009 CALAFCO Annual Conference**

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LAFCO staff, LAFCO Counsel and Commissioner Wilson attended this year's CALAFCO Conference which was held in Yosemite from October 28<sup>th</sup> through the 30<sup>th</sup>.

The program for the first day of the conference included a general session on Climate Change and Water Supply and roundtable discussions for commissioners, staff and attorneys. In addition to the CALAFCO Business Meeting, Thursday's program included panel discussions on Challenges and Opportunities for Regional Governance, Infrastructure Needs for Casinos on Native American Lands, Judicial Review of LAFCO Decisions, Coping with Local Agency Financial Stress, Environmental Justice, Annexation as a Means to Preserve Open Space, Is the Williamson Act Sustainable?, and on CEQA. Friday included sessions on Managing Growth, LAFCO Terms and Conditions, Local Agencies facing Regulatory Requirements and Falling Revenues and a Legislative Update.

Commissioner Wilson moderated a panel on Annexation as a Means to Preserve Open Space Lands. This session examined issues that LAFCOs must consider when reviewing proposals by cities that want to annex lands for preservation purposes.

Commissioner Wilson was re-elected to serve another 2-year term on the CALAFCO Executive Board and will serve as its vice -chair in addition to serving on its Legislative Committee and the Structural Options Subcommittee.

Commissioner Wilson was awarded the Outstanding CALAFCO Commissioner Award in recognition of her 6 years of service to CALAFCO and her active involvement and participation in CALAFCO legislative, policy and operational activities.

Emmanuel Abello, LAFCO Clerk, was awarded the Outstanding LAFCO Clerk Award for his many contributions to CALAFCO and his skilled technical, administrative and clerical support to LAFCO for over 8 years.

## **11.2 Update on Selection of Consultant for Design and Implementation of LAFCO's Electronic Document Management System**

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Staff has entered into a contract with Peelle Technologies, a document management solution firm located in Campbell. The proposal includes both the software license / maintenance for the initial system implementation as well as document backfile conversion which consists of digitally scanning all of LAFCO's records and files into the system.

As of writing this report, Peelle has completed scanning all LAFCO records that were in storage and is in the process of scanning more recent LAFCO records. The scanned records will be loaded onto a LAFCO server once the LaserFische software is obtained and installed on LAFCO computers.

## **11.3 New Cities Representative Appointed to LAFCO**

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The Santa Clara County Cities association has selected Margaret Abe-Koga (Mayor, Mountain View) as the replacement for Commissioner John Howe whose term on the Sunnyvale City Council expires in December 2009. The new commissioner's term will begin in January 2010 and serve until the end of the term in May 2012.

**LAFCO Meeting: December 9, 2009**

**TO:** LAFCO

**FROM:** Neelima Palacherla, Executive Officer  
Dunia Noel, LAFCO Analyst

**SUBJECT: LAFCO Legislative Report**  
Agenda Item # 12

**RECOMMENDATION**

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Accept report.

**BACKGROUND**

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The following is a report on the current chaptered and pending State bills that are most relevant to Santa Clara LAFCO:

**BILLS RECENTLY SIGNED INTO LAW AND PERTINENT TO SANTA CLARA LAFCO**

The following bills take effect on January 1, 2010:

**SB 113 (Senate Local Government Committee) Local Government Omnibus Act of 2009:** This is the Senate Local Government Omnibus bill that makes minor non-substantive changes to local government laws including several items requested by CALAFCO. The bill:

- Repeals the obsolete provisions relating to cities that incorporated in the late 1980s and corrects the statutory cross-references in the statute that explains how new local governments set their appropriations limits
- Corrects the citation to the LAFCO statute in the state law that spells out the procedures for counties' minor boundary changes
- Corrects the citation to special districts' spheres of influence in the County Service Area Law and the Community Services District Law
- Requires a community services district that changes its name to also notify the State Board of Equalization and county auditor in each county where the CSD is located
- Extends the sunset date for mandatory consultation-mediation-arbitration process for reaching a property tax exchange agreement for city annexations from January 1, 2010 to January 1, 2015.

**SB 215 (Wiggins) LAFCOs & Sustainable Communities Strategies:** This bill adds the SB 375 required "Sustainable Communities Strategy" to the factors in Government Code §56668 that a LAFCO must consider in reviewing applications and deletes Government Code §56668.5 which allowed LAFCO to consider regional goals and policies as it would become redundant. The bill adds "Regional Transportation Plans" to the list of factors that LAFCOs must consider when acting on city and special district boundary changes. (§ 56668)

**AB 528 (Silva) LAFCOs and Financial Disclosure:** This bill cleans up the financial disclosure language in the CKH Act to conform to the legislative changes made through AB 1998 to the Political Reform Act in 2008. The bill:

- Creates a new definition of a "LAFCO proposal" within the Political Reform Act
- Replaces, within the Cortese-Knox-Hertzberg Act, specific cross-references to the Political Reform Act with a direct requirement to disclose and report contributions and expenditures for political purposes pursuant to the Political Report Act. (§ 56100.1, § 56700.1)

**AB 1582 (Assembly Local Government Committee) Local Agency Formation**

**Commissions:** This is the Assembly Local Government Omnibus bill that makes changes to local government laws including several items requested by CALAFCO. The bill:

- Allows a LAFCO to determine a proposed new special district's sphere of influence at the same time the commission approves the formation. A LAFCO must determine a new special district's sphere within one year after the district's formation (§ 56426.5)
- Renumbers the code section relating to Williamson Act lands and spheres of influence without substantive change (§ 56426.6)
- Allows a LAFCO to waive protest proceedings for boundary changes affecting legally uninhabited territory if a private railroad company does not submit written opposition to the proposed waiver of protest proceedings (§ 56663)
- Requires protests petitions to contain the same information that current law already requires for petitions that initiate boundary changes (§ 57051, § 57052)
- Adds "from district" city council elections to the list of choices that voters have when voting on city incorporations (§ 57116)
- Shifts the responsibility to pay for a successful reorganization approved by voters from the affected local agencies to the subject local agencies (§ 57150)

## **PENDING 2-YEAR BILLS RELEVANT TO SANTA CLARA LAFCO**

The following are 2-year bills that are pending and will be monitored by LAFCO staff:

**AB 853 (Arambula) City Annexations:** This bill would establish an easier process for annexing unincorporated fringe or island communities to cities.

**AB 1109 (Blakeslee) Nonperforming Special Districts:** This bill would allow a LAFCO to approve "a request for administration of a district" and immediately place the special district under the temporary control of an appointed administrator. Subsequent LAFCO studies may lead to placing the district under the administration of another agency. The bill includes a definition for a nonperforming district.

October, 2009

## Legislature Addresses Key LAFCo Issues in 2009

By Bill Chiat, CALAFCO Legislative Committee Chair

The first year of the 2009-2010 legislative session resulted in little progress in addressing most of the major policy issues facing California. Nonetheless, the Legislature did pass several important bills sponsored by CALAFCO. These laws, if all signed by the Governor, will take effect on 1 January 2010 and address a wide range of LAFCo procedures from financial disclosure to railroad property annexations. Several of these items were years in the making, and we are delighted to have closure to them in 2009.

### Financial Disclosure – Completion of a Three-Year Process

AB 528 (Silva) was passed by the Legislature and signed into law by the Governor on 6 August 2009. It clarifies the financial disclosure requirements on actions before a

LAFCo, moves those requirements from Cortese-Knox-Hertzberg to the Political Reform Act, and moves the reporting requirements from LAFCo to the Fair Political Practices Commission.

### Protest Provisions: Clarity to Written Protest Requirements

In 2008 the California First District Court of Appeals ruled in a case that raised a question on the requirements for written protests. In that case, Citizens for Responsible Open Space v. San Mateo LAFCo, the courts found for San Mateo LAFCo and indicated that, while there is ambiguity in the law, the intent of the Legislature was

clear. Information on the court case – and other court decisions related to LAFCo law – can be found on the CALAFCO website at: [www.calafco.org/court\\_decisions](http://www.calafco.org/court_decisions).

CALAFCO sponsored AB 1582 (Assembly Local Government Committee) which, among other things, clarified the language in C-K-H to address the ambiguity identified in the San Mateo case. It requires protest petitions and written protests (§57051) to contain the same information that current law already requires for petitions that initiate boundary changes (§56704). This legislation was signed by the Governor on 5 August 2009.

### Speeding Up the Railroads

Uninhabited annexations may include private railroad track right-of-way. Even when all the affected landowners consent to the annexation, if railroad land is involved, it has proven very difficult to obtain their consent, even though they may not object. That has resulted in protracted processes and the conducting of unnecessary notices and hearings. After five+ years of working with the railroads, we finally had their agreement and legislative success in 2009!



### Minor Changes to LAFCo Laws

The Omnibus bills from both the Assembly and Senate Local Government Committees contained a number of other small changes to CKH and other laws which LAFCos apply. The Assembly Bill (AB 1582) has already been signed by the Governor. The Senate Bill (SB 113) remained on the Governor's desk for signing at the time of this writing.

Continued on page 10

### 2009 CONFERENCE EDITION

*A NEW DEAL OR  
A HOUSE OF CARDS?*  
CALAFCO 2009 Annual Conference

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Welcome to Tenaya Lodge



# The Sphere

*CALAFCO Journal*

October, 2009

The Sphere is a quarterly publication of the California Association of Local Agency Formation Commissions.

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To submit articles, event announcements, comments or other materials noteworthy to LAFCo commissioners and staff, please contact the Editor at 916-442-6536 or [info@calafco.org](mailto:info@calafco.org).

The contents of this newsletter do not necessarily represent the views of CALAFCO, its members, or their professional or official affiliations.

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California Association of  
Local Agency Formation  
Commissions

**CALAFCO**

## FROM THE CHAIR

# What About Changes in CALAFCO Organization?



**Roger Anderson**  
Board Chair

*By Roger Anderson, Chair  
CALAFCO Board of Directors*

For many years the CALAFCO Board of Directors has attempted to involve LAFCos in regional forums to discuss issues of mutual concern and to facilitate communication with the Board. Previously we organized breakfasts by regions at our Annual Conference, and hoped that such groupings would develop into scheduled meetings of LAFCo Commissioners, Executive Officers, Staff, and Counsel. Although many Executive Officers do meet regularly on a regional basis, there appears to be little involvement with the other people involved in LAFCos. The Board believes that there are considerable advantages with a more defined regional structure for CALAFCO, and during the past year the Board has been developing a proposal to formally develop regions within our organization. We are including our present ideas in the agenda for the 2009 Tenaya Lodge business meeting. But we anticipate that the Board will need at least another six months to prepare a proposal that can be approved by the member LAFCos at the Palm Springs meeting in 2010. However to meet this schedule we need help and input from our members, and the Board has scheduled time for discussion about the reorganization at Tenaya Lodge.

The Board anticipates that the organization would be organized into several regions, and that the LAFCos in each region would meet three times per year to discuss issues, share ideas about policies and approaches to difficult applications, and generally encourage Commissioners and Staff to become more involved in CALAFCO and its educational and legislative activities.

I believe that there are real advantages with a regional organization; however some hard work remains to finalize a proposal. Here is a sample of some questions that I think we will need to address:

- ♦ How many regions should be organized? Which LAFCos will work best together? Who should be delegated to organize the regional activities?
- ♦ How will LAFCos support travel for Commissioners, Staff, and Executive Officers to attend the regional meetings? What is the maximum distance that participants will travel?
- ♦ How can we determine if a regional organization works better than what we now have?

I look forward to listening to anyone who wishes to talk with me at Tenaya Lodge, and I welcome any letters and email ([randerson@calafco.org](mailto:randerson@calafco.org)).

FROM THE EXECUTIVE DIRECTOR

# LAFCo's Contributions to Effective Regional Planning



Many of us have been following the implementation of SB 375 (Steinberg - now renamed the *Sustainable Communities and Climate Change Protection Act of 2008*) with great interest. While SB 375 is intended to provide local government with the details of its role in achieving the AB 32 (Nuñez - *California Global Warming Solutions Act of 2006*) greenhouse gas reductions, what is of equal interest to many in local government is the impact of SB 375 in the broader issue of regional planning in California. SB 375 is one of a series of administrative and legislative policy changes over the last decade or so which has moved regional interests into the land use decisions of local agencies. Regional transportation plans and funding, blueprint plans, regional housing allocations – and yes, even LAFCo municipal service reviews and spheres of influence – are examples of discussions and decisions of future land uses moving to more regional levels.

LAFCo has an ongoing and critical role to play in these discussions and decisions. For 46 years LAFCos have had a unique role in regional growth and land use decision-making. While LAFCo is prohibited from directly determining land use, the legislative intent and local policies adopted by each LAFCo have contributed to the regional growth, service delivery and land

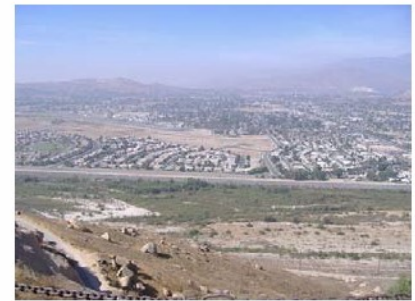
preservation decisions in each county. Looking to this new future, LAFCo can continue to have a significant role and contribution towards effective planning.

Since SB 375 was signed into law last September, there have been ongoing meetings of the stakeholders (cities, counties, COGs, state agencies) to develop guidelines for how the new regional transportation plans and sustainable communities strategies will be prepared and implemented. I have had the opportunity to participate in many of these as CALAFCo's representative. Even though SB 375 may have minimal impact on many of the rural LAFCos, clearly it is catapulting a trend that will affect all LAFCos and local agencies in the future.

### What's Happening Right Now

The California Transportation Commission created a broad stakeholder group to prepare guidelines for the preparation of the new Regional Transportation Plans (RTP) called for in SB 375. Within the RTP is the sustainable communities strategy or alternate strategy that we have discussed within the LAFCo community for the last two years. The RTP is prepared by the Metropolitan Planning Organization (usually the council of governments). The law requires that the spheres of local agencies adopted by LAFCo be considered in the preparation of the sustainable communities strategy or alternate plan.

Because of the enormity of the RTP guidelines, several smaller work groups were created to work on specific areas. I am serving on the Housing and Land Use Work Group which is charged with creating guidelines for the preparing the sustainable communities strategy or alternate. The Group held its first meeting on 14 February. A large number of issues was placed on the table and clearly the group has a lot of work to do in trying to bring everyone into consensus on the guidelines. My emphasis has been twofold: 1) make use of the existing resources from LAFCo (don't reinvent the wheel),



including maps, spheres, inventory of local agencies, and MSRs; and 2) use LAFCo as a resource to connect with the capacity and capabilities of special districts to provide the municipal services that may be required under the various plans.

Work on the guidelines is expected to continue through the fall in concert with the California Air Resources Board (ARB) and its Regional Targets Advisory Committee (RTAC). The ARB is charged with setting the regional greenhouse gas targets that are the foundation of SB 375 implementation. The RTAC is expected to release its recommendations by the end of September. The ARB has a hearing scheduled to consider those recommendations on 19 November. Once ARB adopts the targets, work on completing the

RTP Guidelines is expected to move into high gear. I should be able to start sharing draft guidelines for the sustainable communities strategies and alternates with LAFCo staff later this fall and winter. Ultimate implementation of the RTP and sustainable communities strategy preparation is still several years off.

**LAFCo Contributions and Role**

It is becoming clear that the maps, spheres, local policies and perhaps most importantly – the municipal service reviews – will become valuable elements in the creation of the RTP and the sustainable communities strategy. Special districts are not part of the law or work groups, yet in most parts of the state they provide the needed municipal services

LAFCos’ SOIs and MSRs are valuable elements

anticipated in the RTP. It is through LAFCo that the capacity and capability of those agencies to provide services will enter into the planning in the RTP and sustainable communities strategy. As LAFCos enter into the next round of sphere and MSR updates, recognition of the potential value of that MSR and SOI to the RTP preparation is important.

Assessing the current and potential service capabilities of local agencies may be one of the most important roles LAFCo can play in the planning process. It makes little sense for the Metropolitan Planning Agency to duplicate LAFCo’s review of local agencies.

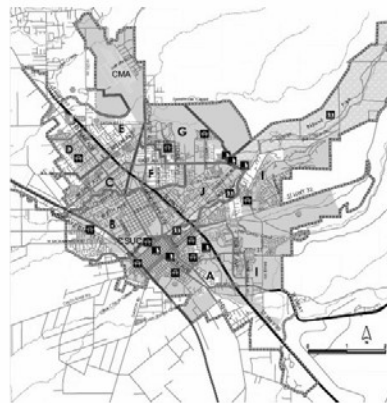
Coordinating LAFCo spheres of influence with the growth plans in

the RTP is another LAFCo role. The law requires the plan to consider current spheres, but not necessarily to adopt those as the planned growth areas. LAFCos need to advocate the policies behind their spheres and share with the MPO concerns of plans which are inconsistent with local agency spheres. LAFCo’s inventory of local agencies (MPOs are likely to be unaware of all the local agencies providing municipal services) and maps of current boundaries and spheres will also be of value to the process.

**What Each LAFCo Should Be Considering**

LAFCos need to be a vital, proactive force in this growing trend towards regionalism, specifically in the preparation of the RFP. Commissions should be considering efforts in three areas:

1. **2013 MSR/SOI Updates.** These will play a critical role in determining the capacity of local agencies to provide services and where growth can actually occur within an RTP. LAFCos may want to evaluate their approach to the MSR/SOI updates to insure the reports will add value to the RTP process.



2. **Review of Sphere and Boundary Changes.** The RTP is several years out and

whether it is consistent with current LAFCo policy is an open question. SB 215 (Wiggins) is on the Governor’s desk for signature at the time of this writing. It will require LAFCos to consider the adopted RTP in boundary decisions. All of this is several years in the future; nonetheless staff may want to be aware of what is contemplated in the RTP as it is developed and how LAFCo changes to local agencies might align with that plan. Clearly once the RTP is adopted, LAFCo will have to consider how its policies and SOIs align with the plan.

3. **Authorize staff participation in the RTP.** If your LAFCo is in a county that is required to prepare a RTP sustainable communities strategy or alternate, consider authorizing your staff to participate in the process, at least at a level to assure that LAFCo policies, spheres and MSRs are considered in the preparation of the plans, and to keep the commission informed about the progress and direction of the RTP.

We’re entering a new world of land use planning. LAFCo has a critical role to play and a contribution to make to continue to assure orderly growth, avoidance of sprawl, protection of agricultural and open space lands, and the efficient delivery of municipal services.

Visit [www.calafco.org/members](http://www.calafco.org/members) for resources on AB 32 and SB 375 implementation and links to climate change Websites.



### **NAPA: New LAFCo Website**

Napa recently launched its new website. The new site was designed by Planeteria (Santa Rosa, CA) and includes pictures and biographies of commissioners and staff. Please visit the new site at [www.napa.lafco.ca.gov](http://www.napa.lafco.ca.gov). Napa has also recently implemented an electronic document management system courtesy of Incrementum (Santa Monica, CA). Finally, we are pleased to announce we will be hosting the 2011 CALAFCO Annual Conference at the Silverado Resort.

*From: Keene Simonds, Executive Officer, Napa LAFCo*

### **FORMATION OF NEW BAY AREA LAFCO CLERKS NETWORK**

We've all seen local networking groups sprouting up. I considered forming a Bay Area group but it never seemed to be the right time. Then last year, my boss Keene Simonds, encouraged me to take on the challenge of forming a network group for the Bay Area LAFCo Clerks. The first thing I did was send out an email to clerks in neighboring counties to establish an interest in forming the group. All Clerks thought it was a worthwhile idea with genuine benefits.

The first Bay Area LAFCo Clerks (B.A.L.C.) Network meeting was held on February 19<sup>th</sup> in Napa at the ABC Café, with the following clerks in attendance: Sandy Hou (Alameda), Kate Sibley (Contra

Costa), Candice Bozzard (Marin), Michelle McIntyre (Solano), Cynthia Olson (Sonoma), and hosted by Kathy Mabry (Napa). A simple agenda was used: Get to Know Each Other, What is Our Role, Current Growth and Regional Issues, State of the Economy, the principles of LAFCo and CALAFCO, as well as how often and where to meet. Thank you to Candice Bozzard for assisting me in getting this group "off the ground."

Each Clerk brought valuable perspectives from his or her LAFCo to share. It was interesting to see how things were done differently at each LAFCo and to share thoughts about the issues we are all facing. It seemed we all had some large projects that we were in the middle of or would be addressing in the near future (i.e. electronic data management/digital recording, etc.). On the surface these projects seemed overwhelming, but we decided that if we work together to keep the dialog and support going, we could tackle them. We are a small enough group that we can work more quickly and efficiently. And, we have the advantage of receiving direct feedback from those Clerks who have the experience. With the current budget constraints on most LAFCos, it is also more cost effective to attend these smaller local meetings rather than a state conference.

The group decided to meet on a quarterly basis. Candice Bozzard of Marin County hosted the 2<sup>nd</sup> Bay Area LAFCo Clerks Network Group on May 21<sup>st</sup> in San Rafael. Cynthia Olson of Sonoma LAFCo hosted the most recent gathering on September 24<sup>th</sup>.

Our newly formed Bay Area LAFCo Clerks meetings have been some of the most fruitful

and exciting meetings I've attended in a long time. They've been a great opportunity to get to know my fellow Clerks a bit better. I'm looking forward to the next B.A.L.C. meetings and invite other Bay Area LAFCo Clerks to join us.

If you have ever thought about forming a networking group, consider starting one in your area. You'll be glad you did. I am delighted my boss encouraged me to form this group!

*From: Kathy Mabry, Clerk, Napa LAFCo*

### **ORANGE: Work in Progress!**

As this article is being written, the days are starting to get a little shorter, the heat of summer is being replaced by the coolness of fall, the beaches are deserted, and summer vacations seem like a distant memory. Hey, but at OC LAFCo, we take no vacations! Our work and commitment to the public, cities and special districts fully sustains us. We *do* not rest. We *will* not rest. We have reached a higher plateau. (Modesty has never been our strong suit.) Bear with us as we share a few of the current projects that OC LAFCo is taking on in 2009-10.

- **Islands** – Annexation of small islands into cities continues to be one of the Commission's highest priorities. Over the last 5 years, we have annexed 35 and have 29 to go. The remaining islands will be the toughest – obstacles are numerous: insufficient infrastructure, private streets, public safety costs, septic tanks, resident opposition, uninterested cities, lack of

## More TRACKS Around the State

transferable County revenue and non-conforming land uses (e.g., medical marijuana dispensaries). With consultant assistance, we are developing a fiscal model which will project how much revenue the County will need to transfer (i.e., sweeten the “pot” – no pun intended) to make it a win-win for both the County and the city over time.



The OC LAFCo staff at work raising issues no one else will!

- **Boundary Report** – At OC LAFCo we reorganize city and district boundaries for breakfast. We’ve found the real challenge is adjusting County boundaries. Even though that is entirely outside LAFCo’s legal purview, we’ve found there’s value in using LAFCo’s unique position among local governments to raise issues that no one else does. (Call us immodest and obnoxious – see photo). County boundaries along the western edge of Orange County (abutting Los Angeles County) cut through subdivisions, mobile home parks and bridges, sometimes placing portions of one city in two different counties (we know that’s illegal, but go figure). Staff completed a County Boundary Report identifying these irregularities, presented it to the Board of Supervisors and is meeting with affected cities to see if there is political support for future County boundary adjustments.
- **School District Report** – Ever go to sleep at night dreaming

why school district boundaries don’t match city boundaries? Or that some school sports fields are locked at the close of school just when community sports teams need them most? Or that city recreational facilities seem to operate independently from school district recreational facilities? OC LAFCo staff, of course, never sleeps but we always dream. Staff is currently working on a school district boundary report to determine if there are opportunities for cities and school districts to increase recreational services and share facilities.

- **MWDOC** – OC LAFCo just finished a marathon comprehensive study of governance alternatives for the Municipal Water District of Orange County (MWDOC), a regional wholesale water agency that provides water to local water districts throughout most of Orange County. (You may be surprised to hear that the entire OC LAFCo staff completed the marathon in record time, although the team award was withheld after an ugly dispute at the finish line – something about the OC LAFCo EO attempting to turn back the time clock.) The MWDOC effort was lengthy, controversial, and productive. Eleven governance alternatives were evaluated from a legal, operational, and political perspective. Although a “receive and file” item at the Commission, the report was successful in answering key questions about viable options for regional wholesale water delivery in the OC.
- **New Commissioner** – OC LAFCo is proud to welcome aboard our newest Commissioner – **Derek J. McGregor**. Commissioner McGregor serves on OC LAFCo as its Alternate Public Member. He

is a licensed civil engineer and land surveyor and has owned and operated his own engineering firm since 1987.

- **And Congratulations to *Arlene Schafer***, Special District representative on Orange County LAFCo, for receiving the California Special District Association’s (CSDA) Past President Award and CSDA Board President of the Year!

From: Bob Aldrich Assistant, Executive Officer, Orange County LAFCo

### SONOMA: Welcome New Commissioners

Sonoma LAFCo welcomes *Teresa Barrett* and *Pam Stafford* as Commissioner and Alternate Commissioner, respectively. Commissioner Barrett, a council-member from the City of Petaluma, had served as an Alternate Commissioner since May 2007. Alternate Commissioner Stafford is a council-member from the City of Rohnert Park.



### Sonoma LAFCo Hosts 2010 Staff Workshop

Sonoma LAFCo looks forward to hosting the 2010 Staff Workshop in Santa Rosa. The workshop will be held at the beautiful Hyatt Vineyard Creek Hotel and Spa on **April 6-8, 2010**.

Mark your calendar to attend this important professional development opportunity for all LAFCo staff.

# LAFCos May Contract for Executive Officer Services



By Scott E. Porter, Colantuono and Levin LLC

Many Local Agency Formation Commissions hire independent contractors as Executive Officers because they have insufficient work for full-time staff or want to save money. Although there was little doubt as to the lawfulness of this practice, the Court of Appeal recently eliminated any doubt in *Hofman Ranch v. Yuba County Local Agency Formation Comm'n*.

There, Yuba LAFCo contracted for part-time "executive officer services" under a contract which outlined 12 broad areas of responsibility the Executive Officer was to provide. The contract, on a standard form of professional services agreement used by Yuba County, stated that the Executive Officer was an independent contractor unentitled to benefits. Over the objections of the petitioner, the LAFCo held a closed session to evaluate the Executive Officer's work and voted to extend his contract.

The petitioner sued, claiming, among other things, that although the Brown Act allows closed-door evaluation of an "employee," an independent contractor Executive Officer is not an employee. The petitioner relied on a 1968 Attorney General's opinion which stated that "the executive officer of a [LAFCo] must be an employee." That opinion issued well before the 1998 report of the Commission on Local Governance for the 21st Century, which led to a thorough revision of what is now the Cortese-Knox-Hertzberg Act.

The petitioners reasoned that, because the contract expressly stated the Executive Officer was an independent contractor, he

could not be an employee, and therefore his closed-session evaluation violated the Brown Act. Petitioners relied on contract boilerplate stating that the Executive Officer "was not subject to the

direction and control of Yuba LAFCo" and that he would not perform his actions as an "agent, officer or employee of LAFCo."

The Court was not persuaded and rejected the 1968 Attorney General's opinion. The central issue for the Court was not how the contract defined the Executive Officer's role, but what role he had actually played. The evidence indicated that the Executive Officer had handled essentially all of the Commission's business with the support of a Clerk /Analyst, and the Court easily concluded he satisfied the Brown Act's definition of "employee," which includes "an independent contractor who functions as an officer or employee."

By concluding that the LAFCo could review the performance of its contract Executive Officer in closed session, the Court affirmed the practice of outsourcing executive officer services.

*Colantuono and Levin, LLC is a CALAFCO Gold Associate Member.*



## ON-LINE LAFCO RESOURCE

Visit "**LAFCo Legal Decisions and Attorney General Opinions**" on the CALAFCO website for summaries and links to decisions and opinions that affect LAFCo law and processes:

[www.calafco.org/Court\\_Decisions](http://www.calafco.org/Court_Decisions)

# NEW WHITE PAPER ON



## PROTEST PROVISIONS

At the 2009 Annual Conference CALAFCO issued its newest research paper:

***"The Good, the Bad and the Confusing: Current Protest Requirements under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000"***

This new CALAFCO White Paper inventories current protest procedures under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, highlights provisions still contained in the Act rendered obsolete by later adopted amendments to the Act, and identifies potential areas for streamlining the protest provision labyrinth.

The paper was prepared by Paula de Sousa of Best, Best & Krieger.

This paper, along with previous white papers prepared by CALAFCO, are available to download from the CALAFCO website under the "resources" tab.

Papers include:

- ◆ Newly Incorporated Cities: Successful Transitioning to Cityhood: *A Guide to Surviving the Post Incorporation Blues*
- ◆ The Metamorphosis of Special Districts: *Current Methods of Consolidation, Dissolution, Subsidiary District Formation and Merger*
- ◆ CALAFCO Forms Library



**Dear CALAFCO Members:** The CALAFCO Board of Directors is proud to report on the progress of the Association over the last year. 2009 saw continued growth in member services, successful efforts in the legislature, relocation to new office facilities, expansion of the reserve funds, and a solid financial footing. In this report we highlight the activities of the last year and look a bit into the future.

Our achievements are the result of the dedicated efforts of the CALAFCO professional staff and the many volunteer LAFCo staff who contribute their time and expertise. The Board is grateful to the Commissioners who support their staff as they serve in the CALAFCO educational and legislative roles on behalf of all LAFCos.

**EDUCATIONAL SERVICES**

**Staff Workshop and Annual Conference**

CALAFCO continued the tradition of quality educational programs with organizing and carrying out the Staff Workshop in San Luis Obispo in April and the annual conference at Tenaya. Both programs focused on discussion and education of timely issues and best practices. Thank you to *Fresno LAFCo* for hosting the Conference and *San Luis Obispo LAFCo* for hosting the Workshop.

We have worked to keep conference fees down so they are not a barrier to attend CALAFCO educational events. We have not increased registration rates for several years, and negotiated an \$89/night room rate for the 2010 Conference at the Hilton Palm Springs Resort. Hope to see you there!

**CALAFCO University**

Six CALAFCO U courses were offered in 2009 with 195 participants. Our curriculum continues to expand to meet the continuing education needs of LAFCo staff and commissioners. 2009 courses included:



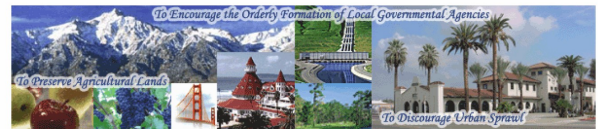
- ◆ End the Chaos: LAFCo Clerk Records and Databases
- ◆ SB 375: What LAFCo Needs to Know (sessions in Southern and Northern California)
- ◆ Fire District Consolidations
- ◆ Development and Annexation Agreements
- ◆ Local Government Finances

Courses were attended by LAFCo staff and commissioners, CALAFCO associate members, and staff from local agencies. The classes provide timely information and opportunities for dialogue

on critical LAFCo issues. Course fees not only offset the costs of the classes but help fund some of the other educational activities of the Association. For members unable to attend the courses, materials for many classes are made available on the website. Thank you to *Joyce Crosthwaite* and the *Orange County LAFCo* staff for organizing these courses. We appreciate the LAFCo staff, associate members and many others who share their expertise by serving as instructors.

**The Website**

The CALAFCO website ([www.calafco.org](http://www.calafco.org)) provides a rich resource to members and others interested in LAFCo issues. The site regularly receives 6,500+ visits per week.



New this year is the **Forms Library**; a valuable resource for LAFCo staff. Posted on the site are over 200 typical LAFCo forms, policies and resolutions. This saves LAFCos hours of staff time to research and prepare the many different forms required for LAFCo processes. The project was coordinated by *Paul Hood* and prepared by Associate Member Winzler & Kelly. Special thanks go to the many LAFCos that made contributions to the library. You can visit the library in the Members Section of the website.

Other additions include posting of Association legal documents, updates on LAFCo-related court cases and Attorney General Opinions, and new versions of various reports and laws. In addition CALAFCO maintains a daily legislative posting for members and list-serves for staff and counsel discussions which foster the sharing of information and resources.

**Research Papers and Publications**

CALAFCO continued its research program with the release at the conference of the newest white paper: *The Good, the Bad and the Confusing: Current Protest Requirements under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000*. Prepared by Paula de Sousa of Best Best & Krieger, the paper provides an inventory of all the at times confusing protest procedures in CKH. This is a valuable resource to LAFCos and provides the Legislative Committee with the research to work on reforms to the obsolete and conflicting provisions of LAFCo law.

We are currently completing the Biannual LAFCo Survey. This comprehensive project documents



statewide information on a range of data from number of applications processed to staffing arrangements and budgets. It's a helpful benchmark tool for commissions. The final document will be posted by the end of the year. Special thanks to Santa Clara Clerk *Emmanuel Abello* for designing the on-line survey and documenting the results. CALAFCO continued to publish *The Sphere*, along with the annual *Membership Directory* and continued distribution of the annual Cortese-Knox-Hertzberg update on behalf of Assembly Publications.

**LEGISLATIVE SERVICES**

**Legislative Agenda and Committee**

The Board reviewed and revised the Legislative Policies which guide the Association's Legislative Committee. The Committee met regularly during the session to propose and review legislation which affects LAFcos. The committee advanced a broad legislative agenda in 2009 and brought success to many of the legislative efforts. Please see the article on the cover for a complete report on our legislative activities. The positive results of the Committee's



efforts in producing new legislation and avoiding bad legislation would have been impossible without the leadership of Committee Chair *Bill Chiat* and the volunteer efforts of LAFco staff and board members who are critical in crafting legislation, providing recommendations to the

Board on legislative issues, and supporting the legislative process.

**Resource to the Legislature and State Agencies**

Due to our efforts to help solve problems and resolve issues constructively, CALAFCO continues to be a sought-after resource to legislative committees, members and staff, and to state agencies. Those activities included serving as a member of the work groups working on the implementation of SB 375 and the Regional Transportation Plan guidelines. CALAFCO also participated in groups working on a variety of issues that remain open, such as expedited processes to annex economically disadvantaged communities and dealing with nonperforming special districts. We expect that there will be significant legislative activity next year that will demand CALAFCO's continuing attention.

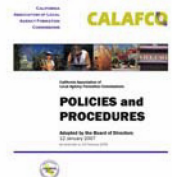
**ASSOCIATION MANAGEMENT**

**Biannual Strategic Plan Review – Regional Structure for CALAFCO**

The Board held its biannual retreat in Irvine in February. A wide range of issues was discussed, and the Board updated both its strategic and legislative priorities. Those documents are available on the website. The Board also discussed a member proposal to structure CALAFCO into regions to facilitate conversations on local issues and to insure the Board has broad input to policy decisions. The Board created a special committee to examine the issue and prepare a recommendation. Over the course of the spring and summer the committee and Board met a number of times on the issue. The Board weighed the issues heavily and engaged in extensive conversation before crafting the policy and strategy proposal now before the members. In the end the 15 members of the Board were unanimous in their support of the proposal. The proposal will be discussed by the membership at the 2009 annual meeting and further refined over the next year. It is anticipated the membership will vote on the final plan at the annual meeting in 2010.

**Financial Management and Policies**

The Association stands on a strong financial base and is in compliance with all state and federal rules governing not-for-profits. This year the Board revised its policy manual and brought the Association into full compliance with the new IRS Form 990 requirements for 501(c)(3) organizations, prior to the 2009 deadline. The policies, along with other Association documents, are available in the Members Section of the website. The Association maintains its records with the national non-profit reporting organization, [Guidestar \(www.guidestar.com\)](http://www.guidestar.com).



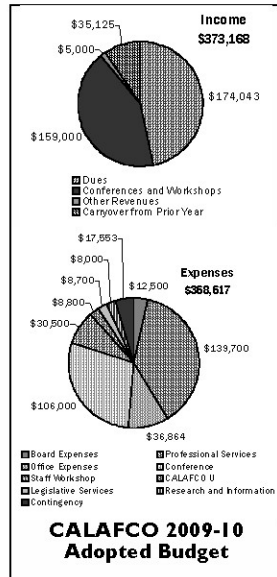
The Board manages the financial resources closely. Additions were again made to the fund reserve this year, which will help support member services in uncertain economic times. The reserve is currently \$78,345, about 34% of the annual operations budget outside of the conference and workshops. The increases resulted from financially successful events and prudent management of the Association's resources. The Association maintains much of its funds with the Local Agency Investment Fund (LAIF). While the interest rates have remained low, the Association has not lost any of the principle in its savings or investments. The Board adopted an



investment policy, and the staff is exploring options for investment of Association funds that are secure and produce an acceptable rate of return. All financial records are reviewed quarterly by an outside CPA with reports to the Board.

### 2009-10 Budget

The CALAFCO adopted budget for 2009-10 had only minor changes from 2008-09. Some increases in rent and professional services resulted from the move to new offices in Sacramento and additional hours for the administrative support of the conference and workshop, and the expanded CALAFCO U activities. The budget is balanced and does not tap any of the reserve funds. The Board voted this year to suspend the automatic dues increase for 2009-10 and maintain the dues at 2008-09 levels. The Board was able to maintain member services without the dues increase.



### New Offices

Early in 2009 CALAFCO moved to its new location in downtown Sacramento. CALAFCO maintains its offices in a partnership with the Regional Council of Rural Counties (RCRC). We are able to take advantage of the services of RCRC (meeting rooms, internet access, phones, copy and mail services, receptionist services) while only paying for the actual space leased. We value the relationship with RCRC and pleased with the new space and support.

Finally we want to recognize the outstanding leadership of executive director **Bill Chiat** and executive officer **Paul Hood** (San Luis Obispo LAFCo). Added to that is our appreciation of the contributions of **Jamie Szutowicz** in the CALAFCO office, deputy executive officers **Joyce Crosthwaite** (Orange LAFCo) and **SR Jones** (Nevada LAFCo), and Legal Counsel **Clark Alsop** (BB&K). These people, along with many volunteers, associate members, and the members of the Board have all worked together this year to bring many achievements and a strong organization to you and the Association.

Sincerely Yours,

*The CALAFCO Board of Directors*

## Legislative Update

*Continued from cover*



- ◆ **Sphere of Influence Deadline for New Districts (AB 1582)** – Allows a LAFCo to determine the SOI of a new district at the time of formation, but requires that it be determined within one year. This is consistent with current law for the SOI of a new city.
- ◆ **Incorporation Elections (AB 1582)** – Eliminates an inconsistency in current incorporation law regarding the system for future council elections. This will allow future council elections to be at-large, by district or from district (§57116).
- ◆ **Reorganization Election Costs (AB 1582)** – Clarifies that only subject, and not affected, local agencies are responsible for reorganization election costs (§56077).
- ◆ **CSD Name Change (SB 113)** – Requires Community Service Districts which change their name to notify state and local agencies, including LAFCo, in each county in which the district is located.
- ◆ **Property Tax Negotiation Sunset Extended (SB 113)** – Revenue & Tax Code 99 provides for a negotiation period for a property tax exchange agreement between the city and county. Current law has a sunset on this provision of 1 January 2010. SB 113 extends that sunset to 2015.

### Regional Transportation Plans as a LAFCo Factor

Senator Wiggins introduced **SB 215** which adds regional transportation plans (RTP), including sustainable communities strategies, to the list of factors LAFCo considers in making boundary decisions. This language was added to 56668(g) which already includes city and county general plans. Since SB 375 includes a requirement for the RTP to consider spheres of influence, it was deemed appropriate that LAFCo also consider adopted RTPs in its decisions. The bill is on the Governor's desk.

### Creation of a District Outside of LAFCo Process

CALAFCO opposed **SB 211** (Simitian) which would allow the Santa Cruz Board of Supervisors to create an open space district and exempt it from the LAFCo formation process. Initially CALAFCO was the sole voice of opposition. However as the bill moved, several communities, stakeholders and Santa Cruz LAFCo took an oppose position. Ultimately it became a two-year bill.

### A Couple We Watched with Interest

**AB 1232** (Huffman) – This affects six agencies in Marin County that provide sanitary services. It allows Marin LAFCo to initiate a consolidation without protest after 2010 if the districts have not done so. The bill grew from frustration that, after numerous discharges, grand jury reports and an MSR that considered consolidations, the

districts have done nothing. The bill passed and awaits the Governor's action. It is one of the first legislative efforts to give teeth to LAFCo MSRs and authority.

**SB 575** (Steinberg) – A clean-up to SB 375 last year. It makes adjustments to timeframes for alignment of the Regional Housing Needs Assessment and the Regional Transportation Plans. It makes changes to provisions for planning grants and provides that SB 375 shall be known as the “*Sustainable Communities and Climate Protection Act of 2008*.” The bill passed and is on the Governor's desk.

**Two-Year Bills**

**AB 853** (Arambula) intended to create an expedited process for the annexation of economically disadvantaged lands. CALAFCO raised concerns with the bill, which would basically circumvent the LAFCo process. Based on our issues and objections from cities and counties, the author agreed to make this a two-year bill. It remains to be seen whether this bill will gather any steam in the second year.

**AB 1104** (Blakeslee) would authorize a LAFCo to identify nonperforming districts and temporarily assign the administration of that district to another local agency. It is viewed as less dramatic than bankruptcy and allows the possibility for better management of an agency while the services are maintained. CALAFCO has been part of the process and will continue to work with the author on language that we could support.

**AB 711** (Charles Calderon) appropriates \$112,000 from the General Fund to provide a loan to the East Los Angeles incorporation proponents to fund their incorporation fiscal study. While the legislation is consistent with all provisions of C-K-H, it is the first time an attempt has been made to use this provision. CALAFCO has a watch position on the bill.

**On the Horizon**

Several areas have been identified for study:

- ◆ *Separate Council Election System from Incorporation.* Current law requires voters to determine the system for election of future councils (at large, by district, from district) at the time of incorporation. The committee is considering language that would make this an option at incorporation, with the default of at large, and leave this as a decision for the future city.
- ◆ *Revenue and Tax Code Clean-Up.* There is a range of inconsistencies within R&T §99. Legislative efforts have corrected some, but confusion remains. The committee is identifying these inconsistencies and will propose correcting legislation.
- ◆ *Conversion of RIDs and MIDs to CSDs.* CALAFCO supports efforts of the Senate Local Government Committee to convert the few remaining Resort Improvement Districts and Municipal Improvement Districts to CSDs. The Legislature

removed the ability to form RIDs and MIDs in the 1960s after exposure of abuses of the law.

- ◆ *Expand Authority of LAFCo Under §56133 to Extend Services.* The committee is examining the elimination of the exemption for non potable/recycled water under §56133 while expanding LAFCo flexibility to approve service extensions outside of a sphere.

It's hard to know what will happen in Sacramento this next year, but your Legislative Committee is ready to educate members on the legislative needs of LAFCo. The committee meets bimonthly during the legislative session. Regular legislative updates are available on the CALAFCO website along with agendas and minutes from Legislative Committee meetings.

<b>2009-10 CALAFCO LEGISLATIVE PRIORITIES</b>	
<b>Viability of Local Governments</b>	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 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.
<b>Agriculture and Open Space Protection</b>	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 prime agricultural, and open space lands, and that encourage other agencies to coordinate with local LAFCos on land preservation and orderly growth.
<b>Water Availability</b>	Insure adequate water supplies and infrastructure planning for current and planned growth. Support policies that assist LAFCo in obtaining accurate data 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.
<b>Authority of LAFCo</b>	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.

# Williamson Act and Annexations: Process and Procedures

By: John Gamper, California Farm Bureau Federation

At the CALAFCO staff workshop in April, I participated in the panel that posed the question:

*If annexations are for development purposes and Williamson Act contracts are for agricultural preservation purposes, why annex lands under a Williamson Act contract?*

When all the panelists agreed that unless a valid city protest of the original contracted land had been exercised by the annexing city, the city must succeed to the contract's land use restrictions, a lively discussion ensued with other workshop participants regarding perceived "inconsistencies" in the law. I thought it might be helpful to review the specific annexation provisions of Cortese-Knox-Hertzberg (CKH) and the California Land Conservation Act of 1965, popularly known as the Williamson Act.

The short answer to the question posed is - don't approve the annexation of land subject to a Williamson Act contract unless the aforementioned protest is on file. Otherwise the city will continue to enforce the contract and implement the agricultural preserve zoning after annexation to insure that agriculture and uses compatible with agriculture will continue on a long-term basis.

Before analyzing the statutory basis for this conclusion, it may be instructive to reflect on the clear guidance to LAFCOs with respect to agricultural land in general. From its very inception in 1963 and with the substantive amendments and recodification 37 years later, CKH has sought to discourage urban sprawl and preserve open-space and prime agricultural land. In addition to statements of state policy in legislative findings and declarations, it could be argued that the very purpose of LAFCOs is to promote the conservation of agricultural land (§56301). The Legislature has also insisted that LAFCOs think long and hard about conserving unrestricted agricultural land, as evidenced by the factors that must be considered in reviewing proposals in §56377 and §56668(d), and (e).

When a city proposes to annex land that is enforceably restricted by a Williamson Act contract, CKH (§56752) and the Williamson Act (§51243) only provide the city two options:

- ♦ succeed to the contract by creating an agricultural preserve pursuant to §51230 and adopting a Williamson Act ordinance that contains the city's uniform rules for implementing the program as required by §51231, or
- ♦ exercise a formal protest of the Williamson Act contract pursuant to §51243.5(d) or as provided in §51243.5(e). [Note: The allowance for a city protest of a Williamson Act contract was repealed on January 1, 1991.]

Prior to 1991, the right to protest a Williamson Act contract was strictly limited to cities whose boundary

was within one mile of the contracted land and only under the circumstances noted in subdivisions (d) and (e) of §51243.5. Eleven years after its repeal, the Legislature felt it was important to make three new findings and declarations related to a city's right to protest a Williamson Act contract. Section 51243.6 emphasizes the constitutional foundation of the Williamson Act that requires the land use restrictions to be meaningful and the fact that a city's right not to succeed to a contract is strictly limited to the provisions of §51243.5. Thus, it is reasonable to assume that the limitations in CKH relative to the options for a city requesting annexation of land subject to a Williamson Act contract must be strictly interpreted.

Therefore, if a city did not file a valid protest with the county prior to Dec. 8, 1971 or did not have a formal protest approved by the LAFCO prior to January 1, 1991, they must succeed to a Williamson Act contract. As noted above, in order to succeed to a contract, a city must create an agricultural preserve in its zoning ordinance and adopt uniform rules for the enforcement of the Williamson Act.



CKH, in §56754, also includes a required determination by LAFCO that a city will either succeed to the Williamson Act contract or exercise a valid protest. LAFCO must also require a city, as a condition to annexation, to prezone the territory to be annexed or present evidence that the existing development entitlements on the territory are vested or are already built, and are consistent with the city's general plan. Thus, in order for §§56754 and 56375 to have coherent meaning, the pre zoning requirement could only be imposed on a city that has the ability to exercise its limited authority not to succeed to the contract due to the presence of a valid protest of the original contract. If a valid protest is not exercised by an annexing city, LAFCO must require the city, as a condition to annexation, to adopt the rules and procedures required by the Williamson Act.

While the limitations on city-proposed annexations of land subject to a Williamson Act contract are clear in Chapter 3--Proceedings for Cities (§56720 et seq.), the CKH provisions relative to reorganization in Chapter 5--Proceedings for Special Districts (§56821 et seq.) add confusion to the issue. In subdivision (a) of

§56856.5 a LAFCo is prohibited from approving or conditionally approving any change of organization or reorganization that would result in an annexation of land subject to a Williamson Act contract to a city or special district which would provide sewer, nonagricultural water, or streets or roads to that land unless the services benefit land uses allowed under the contract.

It should be noted that §56856.5 is in Article 2 of the chapter entitled "Reorganization." Since reorganization is defined as two or more changes in organization initiated in a single proposal, and Article 2 is limited to issues surrounding reorganization, the reference to "organization" seems out of place. The reference to a city annexation in a chapter dealing with proceedings for special districts also appears incongruous except for the fact that a special district reorganization might include transferring territory to a city that would provide sewer, nonagricultural water, or streets and roads. Thus the permissive provisions in subdivision (c) appear to be limited to reorganizations that include special district(s) and a city and do not apply broadly to a proposed annexation by a city.

If a LAFCo allowed a reorganization under §56856.5(c), LAFCo would still be bound by §56754 and § 56889; i.e., the annexing city would still be required to succeed to the contract or exercise a valid protest, and the LAFCo order would still have to impose, as a condition, the adoption of the rules and procedures required by the Williamson Act.

Finally, a hypothesis contrary to fact was proffered during the workshop that merits further discussion. It was suggested that the strict prohibition on the annexation of land subject to a Farmland Security Zone contract (§51296 et seq.), without the landowner's consent, undermines the other statutory requirements in CKH relative to a standard Williamson Act contract. As the sponsor of the Farmland Security Zone provisions, I firmly believe that the Legislature intended to give landowners maximum control over the destiny of their farm or ranch land as an added inducement to participate in the longer 20-year Williamson Act contract. The CKH requirements noted above relative to the annexation of land subject to a standard Williamson Act contract clearly stand alone and must be implemented in a fashion that provides protection to the constitutional foundation of the Williamson Act.

The California Farm Bureau Federation appreciates its excellent working relationship with CALAFCO, and we look forward to working with you to insure the proper implementation of both Cortese-Knox-Hertzberg and the California Land Conservation Acts.

*John Gamber is the Director of Taxation and Land Use for the California Farm Bureau Federation. The author would like to gratefully acknowledge Elizabeth Kemper, executive officer of Yolo LAFCo, and Peter Detwiler, staff director of the Senate Local Government Committee, for their valuable contributions to this article. Their contributions, while essential, dealt with context and not with the interpretation of the statutes. Any flaws in the latter rest solely with the author.*

## "The Final Word"

From Paul Hood  
CALAFCO Executive Officer

Since this is my last CALAFCO Annual Conference after 32 years with LAFCo (three in San Mateo and 29 in SLO) I'd like to say thanks to all of you I have known throughout the years. It has been a distinct pleasure knowing and working with you all. I will be retiring on October 31, 2009 and cannot think of a better way to leave than by attending the Annual Conference in Yosemite.

My association with LAFCo has been both a challenge and a very satisfying experience. I am sure my fondest memories will be of all of the LAFCO folks, both in San Luis Obispo and Statewide, I have known through the years.

I will also be completing my 2-year term as CALAFCO's Executive Officer, with two years before that as Deputy Executive Officer. Working with the CALAFCO Board of Directors and the CALAFCO staff, Bill and Jamie, has also been a



distinct pleasure. I can honestly say that I am proud of the progress of the Association over the last few years in terms of member services, legislative efforts, and the development of a sound financial base.

The Association has not been without its challenges and continues to develop in very different and changing times. However, I believe that CALAFCO has evolved during the recent tough economic times into a much stronger and more responsive organization. Hard work is still ahead but, if recent events are any measure, the organization has met and will continue to meet the test.

Anyway, please accept my best wishes for the future and keep up the good work!

Thank you!

Paul Hood

## Serious or Not: Disincorporation Talks Swirl Around California Municipalities

Written by Andrew Carico

As the old saying goes, the only things guaranteed in life are death and taxes. Well, for some California municipalities, local taxes may no longer be a guarantee.

With the recession making its impact everywhere, local municipalities find themselves in an ever-increasing state of financial stress and searching for new ways to cope.

Now some California municipalities are thinking the once un-thinkable: disincorporation.

Upon disincorporation, a city or town's powers as a municipality are surrendered to the state and county. The city or town ceases to have further duties and all of the city or town offices cease to exist.

This process could allow residents to avoid paying local taxes, escape the costs of local services and pensions, and get other services more cheaply by sharing the costs with the surrounding county.

The idea of incorporation brings residents a local government with the ability to raise money through taxes and bond issuances. It also gives them more control of zoning decisions and development and usually provides for local services such as trash pickup and police as well. This process is practiced by all cities in California currently.

Disincorporation, however, rarely occurs. According to the California Association of Local Agency Formation Commissions, the most recent case in California occurred in 1972 when stalled growth and political instability led Cabazon to dissolve itself.

Recently, two California cities have gained national attention for their consideration of this step to escape their financial burdens.

The city of Vallejo has been rumored to be contemplating disincorporation. According to many, if disincorporated, the city would have to eliminate 38 jobs and shift its sewer services to the county.

Additionally, disincorporating would end public-safety-employee contracts, which city leaders blame for pushing the city into bankruptcy.

The idea of disincorporating came about through a statement during a council meeting over a year ago by then City Manager Joe Tanner.

Vallejo Public Information Officer JoAnne West said that Tanner just this week had his last day on the job

after the council decided not to renew his contract. The council will be meeting Monday night to fill the vacancy.

Vallejo Finance Director Rob Stout said that even though there are rumblings of disincorporation, it is not a serious option.

"We are not seriously considering any type of disincorporation," stated Stout.



"The idea came from a comment from (now former) City Manager Tanner during a council meeting—it was more out of frustration than an attempt at serious policy," Stout said.

"Instead of disincorporation we are considering reducing city salaries and benefits—something we can do automatically with our bankruptcy status," Stout added.

However, not everyone is taking disincorporation so lightly.



Mark Kirk is Chief of Staff for San Bernardino County Supervisor Gary Ovitt. He sees the disincorporating idea as a serious problem for counties that would then have to shoulder the burdens of the former cities.

"At the county level, we're taking the possibility extremely serious," stated Kirk. "We have to know what kind of impact disincorporating would have on the counties."

Furthermore, Kirk stated that several cities are facing extreme crisis because of their lack of preparation.

"Several cities just weren't ready for this," stated Kirk. "The quieter a city is about their financial status, the more nervous I get about their future."

Finally, Kirk warned that counties would be wise to prepare for disincorporation.

"Any county that is not looking at this potential problem seriously is not being diligent," Kirk stated.

The step towards disincorporation would lead into unchartered waters for several California cities. Time will tell whether cities adopt the unconventional idea.



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# In the Interest of Full Disclosure: Perspective of an Applicant

By Jim Sutton and William Tunick, The Sutton Law Firm

Starting next year, those involved in LAFCo proceedings may feel like they are in the midst of a political campaign rather than an annexation or re-organization proceeding. At least they certainly will have to start acting like they are a political campaign by filing public “campaign” reports with the county clerk disclosing all of the money they are spending to support or oppose the proposal.

More specifically, starting on January 1, 2010, new provisions of the Political Reform Act (Govt. Code §84250-84252; all future statutory references are to the Government Code) will treat those supporting or opposing LAFCo proceedings as if they are taking a position on a local ballot measure and subject these entities to campaign-like regulations (Stats. 2009, ch. 113 [“AB 528”]). For the most part, these new provisions merely consolidate and clarify reporting requirements

applicable to LAFCo proceedings that are currently scattered throughout both Cortese-Knox-Hertzberg and the Political Reform Act (see §56100.1, 56700.1, 57009 & 84250-84252); however these existing rules have rarely (if ever) been followed, and never (to our knowledge) enforced. Going forward, real estate developers, citizen groups, and municipalities involved in LAFCo proceedings, as well as their attorneys and lobbyists, will have to pay close attention to these new rules, or risk exposing themselves to fines or even criminal penalties.

The new rules have three important implications. First, unlike the current disclosure law, these new requirements apply to LAFCo proceedings initiated by either petition or

resolution (§82035.5, as amended by AB 528 [adopting an all-encompassing definition of “LAFCo Proposal”]). Second, they require disclosure of all expenditures, and do not exempt expenditures made to comply with the legal requirements of a particular LAFCo proceeding (§84251). Third, and perhaps most importantly, the new requirements come under jurisdiction of the Fair Political Practices Commission (FPPC), and errors and omissions may be punishable by administrative, civil, or even criminal penalties. (§91000 et seq.)

## Requirements Under The Political Reform Act

A few key requirements under the Political Reform Act warrant mentioning specifically given their importance. As an



initial matter, the new provisions require anyone who spends \$1,000 or more in connection with a LAFCo proceeding to register as a “committee” and file, on irregular filing deadlines, special reports with the clerk of the county in which the LAFCo is located (§82013, 84101 et seq. & 84252, as amended by AB 528). The reports must list any and all payments made for the purpose of influencing or attempting to influence the actions of either the LAFCo or voters for or against the qualification, adoption, or passage of an annexation, organization, re-organization, boundary change, etc. (§84251); reportable payments include legal fees paid by a developer, a city’s payment to an EIR consultant, flyers distributed by a neighborhood group, etc.

In addition to the disclosure provisions, filers will be subject to the same record-keeping requirements as ballot measure

committees (e.g., keeping back-up documentation for every transaction for at least four years (2 Cal. Code of Regs. §18401)), and could be audited by the FPPC. (§90000 et seq.) They will also have to print a “Paid for by” disclaimer on advertisements taken out in a local newspaper or mailings sent to local residents. (§84305 & 84501 et seq.) Because the new law empowers LAFCos to enact their own reporting requirements to supplement these FPPC reports, supporters of LAFCo proposals and their opponents may have to look to the LAFCo as well as the FPPC for guidance. (§56100.1(b) as amended by AB 528.)

## Questions Remain

Despite the relatively clear-cut rules set forth above, applying laws intended to regulate ballot measure committees to participants in LAFCo proceedings is often like forcing square pegs into round holes. Indeed, questions about the new rules abound. For example, while ballot measure committees must file “pre-election” reports a set number of days before an election, it is unclear whether LAFCo committees will be required to do the same and, if they are, when they must file these reports. Also, the name of a ballot measure committee must include the name of the “measure” – but what is the name of the “measure” in a LAFCo proceeding and who constitutes the committee?

As these questions illustrate, the new rules are sure to become a trap for the unwary. The broad requirements will force those supporting and opposing LAFCo proposals to more closely consider how and when they spend money in connection with the proceeding, and in many cases, compel those participants to seek legal advice to avoid running afoul of the new “campaign” rules.

# The Sphere

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CALAFCO provides educational, information sharing and technical support for its members by serving as a resource for, and collaborating with, the public, the legislative and executive branches of state government, and other organizations for the purpose of discouraging urban sprawl, preserving open-space and prime agricultural lands, and encouraging orderly growth and development of local agencies.

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