

February, 2011

New Board Elected at Annual Meeting Board of Directors elected for first time by regions

The 2010 CALAFCO Annual Meeting marked the implementation of the new regional system to elect Board Members and the election of an all-new Board of Directors.

Over the summer the membership approved an amendment to the Association Bylaws. That change allowed board members to be elected

by regions at the Annual Meeting in Palm Springs last October. Four regions were created with four members elected from each region. The Board was also expanded by one person to 16 members. Since all 16 seats were up for election, half the seats (randomly selected) were for one-year terms and half for two-year terms. A record 32 commissioners were nominated!

During the annual meeting, each region met separately and elected its four Board members.

Congratulations to the new Board!

Northern Region

- ◆ **Larry Duncan**
Butte LAFCo-District; Term 2011
Paradise Irrigation District
- ◆ **Mary Jane Griego**
Yuba LAFCo-County; Term 2011
Yuba County Board of Supervisors
- ◆ **Kay Hosmer**
Colusa LAFCo-City; Term 2012
City of Colusa
- ◆ **Josh Susman**
Nevada LAFCo-Public; Term 2012

Central Region

- ◆ **Julie Allen**
Tulare LAFCo-Public; Term 2011
- ◆ **Gay Jones**
Sacramento LAFCo-District; 2012
Sacramento Metro Fire District
- ◆ **Ted Novelli**
Amador-County; Term 2012
Amador County Board of Supervisors
- ◆ **Stephen Souza**
Yolo-City; Term 2011
City of Davis

Coastal Region

- ◆ **Juliana Inman**
Napa-City; Term 2011
City of Napa
- ◆ **John Leopold**
Santa Cruz-County; Term 2012
Santa Cruz County Board of Supervisors
- ◆ **Cathy Schlottmann**
Santa Barbara-District; Term 2012
Mission Hills Community Services District
- ◆ **Susan Vicklund Wilson**
Santa Clara-Public; Term 2011

Southern Region

- ◆ **Jon Edney***
Imperial-City; Term 2012
City of El Centro
- ◆ **Jerry Gladbach**
Los Angeles-District; Term 2011
Castaic Lake Water Agency
- ◆ **Brad Mitzelfelt**
San Bernardino-County; Term 2011
San Bernardino County Board of Supervisors
- ◆ **Andy Vanderlaan**
San Diego-Public; Term 2012

*Cheryl Brothers (Orange) was originally elected to this seat, but lost her city election in November. Jon was appointed by the Board to complete the term. He placed second in the regional election.

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Board

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The Sphere

CALAFCO Journal

February 2011

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.

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

To New Beginnings



Susan Vicklund Wilson
Chair, CALAFCO
Board of Directors

This year marks the start of a new chapter in the history of CALAFCO. We have come a long way since 1972. Our new structure is a testament to the fact that, although LAFCos are diverse and have varying interests and viewpoints, the benefit and strength we gain from our statewide organization produce positive results. We came out of the October Annual Conference energized and enthusiastic about the breadth of the new Board and more aware of opportunities and challenges that lay ahead for LAFCo members.

Although it is time of great uncertainty under the current political and economic climate, we know that when we work together LAFCos can make a difference locally and statewide in promoting orderly growth while protecting agricultural and open space lands.

The new CALAFCO Board and our Executive Director are already hard at work. With the By-laws revised, the Board will now take the time to think long-term and plan for the continued improvement of the Association's work.

We have identified discussion items and issues for the Board of Directors' upcoming strategic planning retreat which was held in Irvine on February 17th. We will keep you informed of our progress.

Thank you again to the Riverside LAFCo team and the many others who made the Annual Conference in Palm Springs a success. We received high rating for the Conference. Thank you all for taking the

time to send in your evaluations; your input provides vital information to ensure that the Conference continues to be a valuable and educational event for our members and their staffs. The planning is already underway for the 2011 Annual Conference to be held in Napa August 31 and September 1-2. Save the dates! There is also an upcoming Staff Workshop to be held April 6-8 in Ventura.

With your support, CALAFCO continues to provide excellent educational opportunities and a strong legislative presence. The CALAFCO University Program for 2011 kicked off with a class on Facilitation Skills for LAFCo staff in early February. Two additional courses are now scheduled in April and October. The Legislative Committee continues to work on several important items. I applaud the committee members for their tireless efforts to review and monitor proposed legislation that may impact LAFCos and for ensuring that our legislative role and purpose remain relevant and appropriate.

And last, but definitely not least, I would like to give a special thank you to Roger Andersen, my friend and predecessor for his hard work and leadership last year.

I look forward to serving as chair of the Board in this year of new beginning. I know the Board of Directors and I thank you for your participation and welcome your ideas and input at all times.

CALAFCO BOARD ELECTS OFFICERS; APPOINTS COMMITTEES

At its first meeting following Board elections at the Annual Conference, the Board elected its new officers.

Elected as Chair of the Board was **Susan Vicklund Wilson**. Susan is the public member of Santa Clara LAFCo and has served on the CALAFCO Board since 2004. In addition to her work with LAFCo and CALAFCO, Susan is a family law attorney.

Other officers elected include **Jerry Gladbach** as Vice Chair, **Ted Novelli** as Secretary and **Mary Jane Griego** as Treasurer. Jerry is a special district commissioner on Los Angeles LAFCo; Ted is a county commissioner on Amador LAFCo; and Mary Jane is a county commissioner on Yuba LAFCo.

Appointments were also made to the CALAFCO standing committees.

Legislative Committee

Kay Hosmer (Colusa)
John Leopold (Santa Cruz)
Stephen Souza (Yolo)
Susan Vicklund Wilson (Santa Clara)
Andy Vanderlaan (San Diego)

Alternates include:

Mary Jane Griego (Yuba)
Juliana Inman (Napa)
Gay Jones (Sacramento)
Brad Mitzelfelt (San Bernardino)
Ted Novelli (Amador)

Awards Committee

Ted Novelli (Amador) – Chair
Jerry Gladbach (Los Angeles)
Mary Jane Griego (Yuba)
Cathy Schlottmann (Santa Barbara)

Nominations Committee

Jon Edney (Imperial)
Kay Hosmer (Colusa)
Gay Jones (Sacramento) – Co-Chair
Cathy Schlottmann (Santa Barbara) – Co-Chair

FROM THE EXECUTIVE DIRECTOR

A New Norm for Local Agencies ... and LAFCo



Bill Chiat
Executive Director

The title is no surprise to any LAFCo. We are in the midst of unprecedented times for local governments and elected officials. For the first time in the careers of most of us, local agencies are experiencing *permanent* fiscal stress. Most are rapidly coming to the realization this is not a dip in a long-term growth cycle but rather a permanent drop in the level of resources available to local governments. No longer is the discussion about bridging finances until we are out of the economic meltdown, but rather how are agencies going to provide services and be responsive to changing needs in the new economy.

LAFCos see this from two perspectives: 1) as local agencies themselves; and 2) in their interactions with local agencies in their counties.

As local agencies, many LAFCos have worked to reduce their budgets in light of a major reduction in applications and financial



stress facing local agencies that fund LAFCo. A variety of strategies have been employed, from reducing the use of consultants for MSRs to decreasing staffing or hours. LAFCos need to continue to explore innovative approaches to accomplish their responsibilities and operate within the new reality. Several LAFCos, for example, have partnered on certain projects, such as audits, to achieve better pricing. At a statewide level, CALAFCO is exploring options for LAFCos to move the SOI/MSR update cycle from

five to eight years and tie it to the regional plan cycle. With potential legislation in 2012, this could have the effect of lowering the annual workload and costs for the updates by perhaps 30%.

At the same time, as small signs of growth emerge, LAFCos are becoming an increasingly visible and important decision point in the planning process. We cannot compromise the critical analysis in LAFCo review of applications and proposals, nor in the updates to Spheres of Influence and Municipal Service Reviews. Other entities are recognizing the value of these documents and are using them (or required to review them) as part of their own decision-making process. The requirement for metropolitan planning agencies to review SOI/MSRs in preparing sustainable communities strategies is but one example.

LAFCos are also dealing with the impact of the meltdown on local agencies. A review of topics at recent CALAFCO workshops, conferences and University courses shows the interest in consolidations, mergers and other reorganizations. For the first time in decades, the question of disincorporation has emerged. CALAFCO receives four or five calls a month about disincorporation or dissolution. The potential realignment of more services from the state to local agencies will provide additional opportunities to carefully look at local service delivery. In a discussion at the Capitol the other day someone asked if the state really needs some 5,000 local agencies to deliver municipal services.

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A New Norm for Local Agencies

Continued from page 3

The legislature (for better or worse) continues to see LAFCo as their “watchdog” of local agencies. Several legislative proposals are being discussed that may add more authority for LAFCo to address some service delivery issues identified in an MSR, such as “paper” agencies or agencies that no longer perform their intended purpose(s). The intent of the Legislature is to ensure that every available resource – including property tax and user fees – is used as efficiently as possible to deliver effective services and to potentially free up needed funds for local services.

Many LAFCos are engaged with their local agencies in seeking opportunities for efficiencies in service delivery and facilitating discussions to preserve critical municipal services or service levels and opportunities for shared resources or facilities. The article in this issue from Orange LAFCo highlights the approaches they have implemented.

In the January issue of the League of Cities’ *Western Cities* magazine, Dr. Frank Benest (former City Manager of Palo Alto) identified “Ten New Rules for Elected Officials in Times of Economic Meltdown.” Several of these have merit for LAFCos to consider in their work with local agencies and their own operations:

- ◆ Identify the “core” – identify core versus non-core services and programs. Stick to the core.
- ◆ Focus on a few priorities – relentlessly pursue those three or four priorities with limited resources.
- ◆ Have the courage to say “no” – keep the focus on core services and the few priorities. Say no to new demands.

- ◆ Help develop talent and rebuild organizational capacity – retain talent and develop new talent with continuing education and development opportunities.

In concluding his article, Benest argues that “...courage will become a hallmark of effective governance. Convening stakeholders, starting courageous conversations and engaging all groups in difficult decisions will become the core competencies of leadership.” LAFCos have a leadership role they can play in assuring the delivery of efficient, quality municipal services in a “permanently disrupted world.”

TRACKS



New Commissioners at Sonoma LAFCo

Sonoma LAFCo welcomes three new commissioners! David Rabbitt, a former member of the Petaluma City Council elected as a County Supervisor in November 2010, joins the Commission as a regular member while Mike McGuire, also elected as a County Supervisor last year, joins as an alternate member; Commissioner McGuire previously served as a councilmember in the City of Healdsburg.

Aimee Crawford, a land conservation specialist and former board member of a local recreation and park

district, was selected, in November, as the alternate public member by other members of the Commission. Welcome!

SAN JOAQUIN LAFCo Loss of Long-Time Legal Counsel

Michael F. McGrew

On November 30, 2010, Michael F. McGrew, Legal Counsel for San Joaquin LAFCo, passed away. McGrew served as San Joaquin LAFCo’s legal counsel since March 1972, over 38 years of service. This perhaps may be the longest, uninterrupted legal service provided to a LAFCo.

McGrew began practicing law in the San Joaquin County Counsel’s Office soon after passing the bar. His first assignment was to provide legal counsel to a LAFCo meeting for a senior staff member who couldn’t make the meeting. This first assignment in 1972 soon became a permanent undertaking and he would eventually provide legal support to San Joaquin LAFCo for another 38 years.



Michael F. McGrew

McGrew provided exemplary legal advice and guidance to the Commission and staff and had defended San Joaquin LAFCo decisions on controversial projects during his career.

Continued on next page

Michael F. McGrew

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His most notable case was the South San Joaquin Irrigation District vs. San Joaquin LAFCo which ultimately resulted in a favorable decision for LAFCo from the California Third Appellate District Court of Appeals.

The case has a far-reaching effect on all LAFCo staff members and commissioners, as well as those persons serving on city, county and special district boards and commissions. The Third District Court of Appeals overturned a Superior Court's original ruling allowing depositions of LAFCo commissioners and staff. The decision preserves the sanctity of public office and protects other officeholders from interrogation by disgruntled applicants.

McGrew was also instrumental in the successful outcome of the South San Joaquin Irrigation District vs. Superior Court (San Joaquin LAFCo) in which the court reaffirmed that a special district may not provide a "new or different service" without first receiving approval from LAFCo.

He will be missed.

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ORANGE COUNTY LAFCo



Redefining Roles: We're Not Your Daddy's LAFCo Anymore

With California facing an estimated \$28 billion deficit and a new Governor and Legislature desperately looking for ways to close that gap, local governments are bracing for a new round of fiscal impacts. Most LAFCos around the state are dependent on local governments (counties, cities and special districts) to fund their annual operations. As local governments continue to feel the economic squeeze at all levels, how can LAFCos find new ways to provide value to their funding agencies? How can we ensure that those agencies that do not use LAFCo's "standard" services (e.g., annexation, reorganization, incorporation) get some type of return for their annual investment to fund LAFCos?

One option your LAFCo may want to consider is to step outside the typical boundaries of LAFCo as defined by Cortese-Knox-Hertzberg. Because of our independent status and diverse make-up, LAFCos are uniquely positioned to think "big," raise important issues and undertake special studies that others may shy away from due to political or public sensitivity. The broad latitude given to LAFCos to complete Municipal Service Reviews (Government Code Section §56430), for example, provides the perfect opening for LAFCos to explore a wide range of fiscal and service-related issues.

Want some specifics? Here are some "outside the boundaries" examples that Orange LAFCo (OC LAFCo) is currently working on:

Shared Services

In August 2010, OC LAFCo directed its staff to explore the potential for a web-based tool matching up agencies seeking specific services with other agencies offering services (think of it as LAFCo's own dating website). As local governments within OC continue to balance rising costs (and demands) for service with dwindling revenues, sharing services may be one way to help. Staff has also designed a stakeholder process for exploring shared service opportunities and possible cost savings. Stakeholders include not only cities and special districts but also school districts, homeowner associations and the Orange County Business Council. Dream matches (at an agency level) will soon be a click away.

Fiscal Early Warning System

Results of past municipal service reviews showed that most Orange County cities and special districts are on stable financial footing. Given the current depressed economic climate, however, all bets are off. Many local agencies have begun to significantly reevaluate their budget planning and evaluation process.

OC LAFCo has initiated a stakeholder process to develop an "Early Warning System" based on the State of North Carolina's Financial Analysis Tool. When completed, this tool will allow agencies to compare themselves to "industry" benchmarks based on key financial indicators. The final product will be another web-based "financial

dashboard” that will allow local governments (and the public) to monitor key financial indicators of each local agency on LAFCo’s website. (So... if you use both the Shared Services website and the Early Warning System dashboard together, you could potentially find an agency that both meets your service needs and is financially well off, too. Talk about a dream match. (Now, that’s facilitating good government.)



County Boundary Report

While LAFCo has no authority over county boundary adjustments (those are decided by the affected Boards of Supervisors), it did not stop OC LAFCo from raising some long-standing service issues that resulted from irregular boundaries along the Orange County/Los Angeles border. LAFCo staff has facilitated discussions among the counties of LA and Orange, affected border cities and residents which have resulted in moving forward on several minor county boundary adjustments and corresponding city reorganizations. The result will be improved service and response times for our border cities.

Joint Audit Contract

Most LAFCos have similar budget structures: the majority of revenues are provided by counties, cities and special

districts and expenditures are primarily for staff salaries and benefits, consultants, special services, office space and supplies. Members of the California Coalition of LAFCos in the Southern California area have taken advantage of their commonalities and are utilizing one CPA firm to perform audits for five LAFCos. Through this joint audit contract process, each of the participating LAFCo will realize a reduction in audit fees.



Upcoming Courses Focus on Land Use Law and Regional Governance

California Planning and Land Use Laws for LAFCo Staff

Tuesday, 5 April 2011, 1:00—5:00 p.m. *Preceding the CALAFCO Staff Workshop in Ventura*

This course provides an overview of contemporary planning and land use laws and practices in California and how they pertain to LAFCos. Learn about state planning and land use laws and how cities and counties implement them. Understand how these laws and practices intersect with the Cortese-Knox-Hertzberg Local Government Reorganization Act, the similarities and differences, and effective ways to participate in local planning processes.

Moderated by Bruce Baracco, the session includes as faculty, Fernando Avilia with Best Best & Krieger, Scott Porter with Colantuono & Levin, and Matthew Winegar, AICP, Development Services Director, City of Oxnard.

LAFCo’s Role in Regional Governance – A Best Practices Workshop

Friday, 28 October 2011, 10:00 a.m.—3:30 p.m. *Sacramento*

For information and registration for these courses, please visit the CALAFCO web site at www.calafco.org. Course registration for CALAFCO members is \$75/person or \$60/person for 3 or more from the same LAFCo.

Courses are eligible for AICP credit.

Save the Date!

CALAFCO 2011 Conference

in the beautiful Napa Valley

August 31—September 2 2011

- ◆ Inspiring mobile workshop
- ◆ Thought provoking sessions
- ◆ Updates on LAFCo law and issues
- ◆ Networking opportunities with commissioners and staff
- ◆ Best practices in LAFCo process and operations

At the Silverado Resort and Spa

Early Registration (by 29 July)
\$390/person

Amazing Lodging Rates
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Watch the CALAFCO web site for registration and resort reservation details!



Sustainability in the World of LAFCo Operations

By Daniel Hamilton, AICP, Hamilton Planning and Research

Sustainability is the new frame of reference for local decision making. Like most broad concepts, its definition and application vary widely by jurisdiction and geography. Sustainability is labeled by governments and advocates as environmental protection, resource conservation, green job development, a balancing of resources, and by many other definitions. But regardless of how it is defined, it is a notion in use by many of the cities and special districts overseen by LAFCos, and myriad state laws and programs recognize it as an integral part of the future of our communities. As such, it will become essential for each of our LAFCos to account for its consideration and application in the review of municipal boundaries and operations.

159 of 377 cities surveyed by the Governor's Office of Planning and Research (OPR) in 2010 had adopted a Climate Action Plan (CAP) or other greenhouse gas (GHG) reduction plan. 154 cities and counties indicated to OPR they have either adopted or are preparing general plan policies to address climate change or other aspects of sustainability. With both federal (American Recovery and Reinvestment Act) and state (Proposition 84) funds available for such efforts for the next several years, it is reasonable to expect the number of such plans addressing sustainability and its components will continue to grow. The further implementation of laws such as SB 375 and AB 32 will also add to the number of cities and special districts with principles of sustainability incorporated in policies and plans.

As we in the LAFCo community initiate or see new applications for boundary changes and growth plans, we will be called upon to exercise judgment on whether such plans are consistent with sustainability policies in both local (General and Specific Plans) and regional (sustainable community strategies, regional climate action plans) documents. With these new changes already in place in many communities, here are some options for addressing these sustainability

issues in the most common applications and actions:

Spheres of Influence – Since 2002, SOIs have been based on both the determinations found in Municipal Service Reviews and CKH standards (56425(e)) for SOI establishment. The determinations in the latter include calculation of the need for public facilities and services in the area, as well as the capacity of existing facilities and services. For many communities, sustainability efforts include programs and policies to reduce demand for services through conservation, technology, and behavioral change. Stormwater management, for example, can be significantly affected by low impact development standards, installation of bioswales, use of pervious concrete, and onsite water retention. More measures exist for water, sewer, energy, and solid waste disposal, and are changing frequently. These efforts are not always codified in General Plan policy, and thus may not be among the documents typically reviewed by LAFCo staff in the review of an agency's SOI. As part of the SOI Update process, LAFCos can amend application procedures to provide applying cities and counties the opportunity to list details of their sustainability measures affecting facility needs and service demands. To effectively review the boundaries of a city or special district, it is going to become necessary to understand how these efforts will affect land demands, growth expectations, and abilities relative to service expansion.



Municipal Service Reviews – Like Spheres of Influence, MSR determinations are going to require additional analysis of sustainability measures to effectively and accurately gauge service provision and facility demands. Changes in demand for services such as water,

energy, and solid waste are expected from these programs and are also found in documents outside the General Plan and utility master plans. For instance, a Climate Action Plan for a city typically includes programs and policies to increase energy efficiency in existing and planned structures, expand recycling programs citywide, increase water conservation through building renovation and new construction standards, reduce roadway demands, and promote infill development. Each of these has the potential to affect both service provision and growth demands, and may not have been included in the previous round of service reviews. Additionally, these documents also

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Legislative Report

From Sacramento

By Bill Chiat, CALAFCO
Legislative Chair

The Legislature is back in session, and after a slow start has now introduced over 1,000 new bills. In a major reorganization, the Senate combined the Local Government and the Revenue and Taxation committees into the new Governance and Finance Committee. A key motivator is the Governor's push for realignment of more state services to the counties. The Governance and Finance Committee is meeting weekly and has already held hearings on realignment and redevelopment agencies.



A number of the bills introduced could impact LAFCo law and operations, although at the time of this writing, not in a significant way. CALAFCO staff continues to work with sponsors and authors on proposed legislation.

Among the 23 bills CALAFCO is tracking:

AB 54 (Solario) – Adds authority for LAFCo to consolidate mutual water companies. LAFCo is seeking language to require mutuals to be responsive to LAFCo requests for information.

AB 46 (Pérez) – Provides for the disincorporation of any city with a population under 150.

AB 244 (Wolk) – Requires the Housing Element to address the presence of island, fringe, or legacy unincorporated communities inside or near its boundaries, and requires the updated general plan to include

information on sewer, water and other infrastructure services. Similar to AB 853 last year, this bill is expected to be amended with additional requirements.

AB 62 (Smyth) – Requires that, if an audit of a local agency reveals certain financial irregularities, the findings be sent separately to the Controller immediately after the audit has been concluded.

AB 187 (Lara) – Authorizes State Auditor to identify, audit and issue reports on any local agency the Auditor identifies as being at high risk for the potential of waste, fraud, abuse, or mismanagement or that has major challenges associated with its economy, efficiency, or effectiveness. Allows Auditor to consult with other agencies, including LAFCo.

SB 46 (Correa) – Requires all filers of the Form 700 to also file an annual compensation form.

SB 27 (Simitian) – Limits final compensation calculations for state and local agency pensions.

A complete list of CALAFCO bills and daily updates is available in the Member section of the web site.

CALAFCO staff is working with Members and staff on other proposed legislation.

C-K-H Omnibus Bill – Each year CALAFCO sponsors a bill with technical, non-substantive changes to Cortese-Knox-Hertzberg. This year in addition to a number of minor corrections, the CALAFCO Legislative Committee has completed a major update of the definitions section of C-K-H. CALAFCO is working to include this significant improvement in the Omnibus. After discussions with the Republican Caucus and various stakeholders no objections have been raised to date. The bill is expected to be introduced in late February.

Proposed Legislation – CALAFCO is reviewing several proposed bills. In an expansion of last year's AB 853, one proposal would require a review of disadvantaged unincorporated community services in MSR/ SOI updates and require the extension of services to these communities. Another proposal would give LAFCo more authority to dissolve or consolidate "paper" districts or districts that no longer provide their primary service. Watch for further information if these and other LAFCo-related bills are introduced.

Sustainability in the World of LAFCo

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represent potential new areas of service provision to be generated by cities and special districts, such as solar power generation. As MSRs are updated in coming years, new areas of analysis need to be incorporated into the existing review criteria set forth in CKH 56430(a) to assess the impact these sustainability measures will have on services and demands. Whether through addition as a component of the five major areas of analysis or as a stand-alone section, it will become part of updates to these reviews.

In addition to these examples, LAFCo staff and commissioners may find the creation and implementation of regional sustainability plans such as the sustainable community strategy to be adopted by regional governments, will further complicate this process. As both techniques and technologies evolve, the methods cities and districts use to address sustainability will also change. LAFCos will need to be responsive to these changes and find new and creative ways to ensure service and boundary determinations accurately reflect the new ways California's providers are planning for our future.

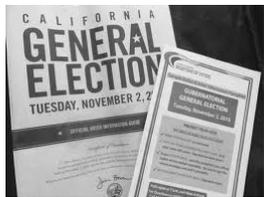
Prop. 26 is Latest Initiative Limit on Local Revenues

By Michael G. Colantuono

By a relatively narrow 53% margin, on November 2, 2010 California voters approved Prop. 26 to convert some local fees to taxes requiring voter approval. Although, like most initiatives, the measure raises many questions, some initial guidance is possible.

Background. In 1997 the California Supreme Court decided *Sinclair Paint Co. v. State Board of Equalization*, upholding a fee imposed on businesses that make products containing lead to fund health services to children and to otherwise mitigate the social and environmental consequences of lead contamination. The Court ruled that the use of the proceeds of a fee need not benefit those charged to avoid making the fee a tax as long as the fee bears a reasonable relationship to the burden imposed by those charged. Similar fees have been proposed, such as fees on sweetened beverages to fund anti-obesity programs and fees on alcohol vendors to fund police services and public education efforts to address the adverse consequences of alcohol consumption. In addition, a number of proposals in the Legislature sought to avoid the two-thirds approval required for taxes, such as a proposed surcharge on vehicle license fees to fund state parks; and a 2010 action to reduce state taxes on gasoline, but to increase fees on gasoline to fund public transportation and other programs.

The Measure. The heart of Prop. 26 is its definition of “tax:” As used in this article, ‘tax’ means “any levy, charge, or exaction of any kind imposed by a local government, except the following... .” Seven exceptions to this sweeping definition are all that remain of local governments’ power to impose fees without voter approval. The first of these covers fees “imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.” This should cover fees associated with planning and police permits, franchises, and parking passes, and the like, provided that those fees are limited to cost of the permit program and the benefit or privilege “is not provided to those not charged.” If taken literally, this means that



no one can be charged for a benefit or privilege if anyone gets it for free, thus prohibiting free passes for senior citizens and lower-income households. It certainly prohibits discounts or free passes if the cost of services to those charged less than the full price is recovered from fees imposed on others – *i.e.*, the measure prohibits cross-subsidies among fee payors by which some pay more than the cost of service so others may pay less or nothing. It seems likely that discounts are permissible if funded from non-fee revenues, because the language of the exception is “those not charged” rather than “those not charged in full.” Less clear is whether free passes can be subsidized with non-fee revenues while still allowing a city to impose a fee on others.

Next are fees “imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.” This exception will cover utility fees not subject to Prop. 218, park and recreation fees that are not admission or equipment rental fees (which are governed by the fourth exception discussed below), transit fees, emergency response fees, and a wide range of other government fees. We believe this exception will apply to such inter-governmental charges as booking fees, property tax administration fees, etc.

Next are fees “imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.” This exception will cover a wide range of local government regulatory fees such as building permit fees, fire inspection fees, weed abatement assessments, alarm permit fees, and the like.

The fourth exemption is for fees “imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.” Notably, this exception does not require a city to limit fees for use of its property to cost nor is this exception limited to real property. If a city makes personal property available for purchase or rental, it can charge whatever the market will bear. Among the fees that will be protected by this exception are: franchise fees for which rights to use rights-of-way or other government property are provided, like cable, gas, electric, and pipeline franchises; and park and recreation entrance fees and equipment rental fees (but not fees for park and recreation services, like classes).

The fifth exception is for “[a] fine, penalty, or

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Prop 26 Implications Examined (continued)

other monetary charge imposed ... as a result of a violation of law.” This exception will include parking fines, administrative penalties imposed in the code enforcement context, late payment fees, interest charges, and any “other monetary charge imposed by” a city “as a result of a violation of law,” defining the last term broadly.

The sixth exemption is for fees “imposed as a condition of property development.” In general, most planning and building fees will fall within this exemption or one of the first three exceptions listed above.

Finally, Prop. 26 has no application to assessments and property related fees subject to Prop. 218. This will include retail (but not wholesale) fees for government water, sewer and trash services.

In light of this, what can we determine is plainly a tax requiring voter approval as a result of Prop. 26? For now, this list is short. It includes mainly the kinds of fees authorized by the *Sinclair Paint* case, like the state’s fee on lead-containing products, the alcohol impacts fees some local governments have imposed to address nuisance behaviors near alcohol vendors, and the air pollution district fees noted above. It also appears to prevent increases in the Fish & Game fees imposed on local governments to fund review of CEQA documents. It may also require rethinking of some 1989 Act (non-property-based) business improvement districts to separate services to the public from services to the assessed businesses.

What to do now? Initially, we recommend local governments do the following:

- ◆ Don’t adopt a new fee or increase an existing fee without legal advice.
- ◆ Review existing fees to better understand the impacts of the measure on a city and begin to plan to deal with its consequences.
- ◆ Consider segregating unrestricted fee revenue from revenues newly restricted by this measure to ensure that it can comply with the spending restrictions of the measure without imposing restrictions on funds that would otherwise be discretionary.
- ◆ Consider whether some fee obligations can be established by agreement rather than by legislation, such as a solid waste contractor agreement rather than a solid waste hauling “franchise” adopted by ordinance.

Stay tuned! As always, the law in this area will develop over time and rapid developments can be expected initially. We’ll keep you posted!

CALAFCO 2011 STAFF WORKSHOP

April 6 to 8 at
Ventura Beach
Marriott



Remember to register for the 2011 Staff Workshop in beautiful Ventura on April 6-8! The Workshop is preceded by a CALAFCO U course on April 5 regarding planning and land use law. The Workshop includes a mobile workshop to the Reagan Presidential Library and Museum, which was recently annexed to Simi Valley. The Reagan Library, operated by the National Archives, is one of only two presidential libraries located in the western U.S. and is home to Reagan’s Air Force One.

The Workshop includes a wide array of interesting and thought-provoking sessions, with several sessions dedicated specifically to clerks. Learn about how the effects of climate change can impact your LAFCo, budget tips to reduce costs and increase revenue, the requirements of the Public Records Act, and how to write a more effective staff report. Hear executive officers, city managers, LAFCo Commissioners, public law attorneys, and other local officials and experts discuss these and many other topics. Go to www.calafco.org to learn more and register for the CALAFCO U course and Workshop. *Hope to see you there!*

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We appreciate your support



CALAFCO Honors 2010 Achievement Award Recipients

Each year CALAFCO recognizes outstanding achievements by dedicated individuals and agencies to LAFCo and Cortese-Knox-Hertzberg principles through the CALAFCO Achievement Awards. The 2010 awards were announced and presented at a special awards banquet during the CALAFCO Conference in Palm Springs last October.

CALAFCO is proud to recognize the following individuals and agencies for their outstanding contributions:

OUTSTANDING CALAFCO MEMBER

Roger Anderson, Ph.D.

CALAFCO Board of Directors Chair and public member of the Santa Cruz LAFCo



Awards Chair Ted Novelli (l) presents Outstanding Member award to Roger Anderson (r)



George Lange receives Outstanding Commissioner Award

DISTINGUISHED SERVICE AWARD

Kathleen Rollings-McDonald

Executive Officer of San Bernardino LAFCo and member of the CALAFCO Legislative Committee

Bob Braitman

Executive Officer of Santa Barbara LAFCo and member of the CALAFCO Legislative Committee



Executive Officers Kathy Rollings-McDonald and Bob Braitman receive the Distinguished Service Award



OUTSTANDING LAFCO CLERK

Candie Fleming

Clerk of the Fresno LAFCo

GOVERNMENT LEADERSHIP AWARD

Nipomo Community Services District and the County of San Luis Obispo



Bill Connelly receives Butte LAFCo Project of the Year Award



David Church accepts SLO Government Leadership Award

MIKE GOTCH COURAGE & INNOVATION IN LOCAL GOVERNMENT LEADERSHIP AWARD

Helen Thomson

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George Lange

Commissioner, Ventura LAFCo

OUTSTANDING LAFCO PROFESSIONAL

Harry Ehrlich

Local Government Consultant, San Diego LAFCo and Vice Chair of CALAFCO Legislative Committee

PROJECT OF THE YEAR

Butte LAFCo

Sewerage Commission-Oroville Region Municipal Service Review

SPECIAL ACHIEVEMENT

Chris Tooker

Public member of Sacramento LAFCo and CALAFCO Board of Directors



Chris Tooker accepts a Special Achievement award in recognition of 16 years of service on the Board



Harry Ehrlich is recognized as Outstanding LAFCo Professional

The Sphere

CALAFCO Journal

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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.

Sharing Information and Resources

PHOTO HIGHLIGHTS

CALAFCO 2010 Conference

October in Palm Springs



David Church and Kim Uhlich kick off Conference with LAFCo 101



CALAFCO Chair Roger Anderson opens 2011 Conference



Host Riverside LAFCo EO George Spiliotis with yet another door prize



General session focused on fiscal realities for local agencies



CALAFCO Executive Assistant Jamie Szutowicz ready to help



Commissioner Juliana Inman campaigns during regional elections



Newly elected CALAFCO Board meets for first time during Conference



Newly elected Board Chair Susan Wilson and Vice Chair Jerry Gladbach



Nominations Chair Chris Tooker tallies ballots after regional election



General session focused on the role of conservation in urban water supplies