

July, 2010

Attorney General Supports Solano LAFCo Revenue Protection Policy *Policy protects special district revenues in annexations*

By Shaun Pritchard, Solano LAFCo Executive Officer

Solano County has never been in the business of urban development. Its long-standing Orderly Growth Initiative dictates that urban development shall occur in its seven cities: Benicia, Dixon, Fairfield, Suisun City, Rio Vista, Vacaville, and Vallejo. This practice has led to 95% of Solano County's population living within city limits with only 5% living in the unincorporated County. Aside from San Francisco County, Solano has the highest ratio of urban to unincorporated population in the State.

Practicing "Smart Growth" before the term was even coined has led to much efficiency in Solano County. However one group of agencies, Solano Rural Fire Protection Districts, has suffered as a result of these growth patterns. With every city annexation a fire district was detached and revenues were lost. While these amounts were often small the cumulative impact had put the long-term viability of the fire districts in question. Meanwhile, the cost of operating the fire districts did not diminish in proportion to the territory it no longer protected. In fact, operational costs only increased and the fire districts were left to deal with the perils of the fire danger along the rural/urban interface that result from the city annexations.

In 2008, Solano LAFCo determined that it could no longer allow the incremental loss of revenues to the fire districts.

Staff set out to amend existing policy to address the commission's and fire districts' concerns.

Solano LAFCo already had in place a standard that dealt with "the effect of the proposed action on the adjacent areas, mutual social and economic interests, and on local government structure."

Staff amended this policy to further read "... *potential negative impacts upon the County and neighboring agencies will also be considered. Examples include proposals that negatively impact special district budgets or service provision or proposals that demand special district services without the provision of adequate funding...*"

The amended policy further stated, "*in cases where special districts might be harmed, either through detachment or annexation, the applicant should work with the executive officer to identify the affected agencies and work with those agencies to identify and mitigate the impacts prior to the LAFCo hearing. LAFCo will not normally approve detachments from special districts or annexations that fail to provide for adequate mitigation of the adverse impacts on the district. Where the adverse impact is fiscal, adequate mitigation will normally include a permanent funding source for lost revenues or increased costs to the affected special district. Where potential impacts on other agencies have been identified, the application may be deemed incomplete or the LAFCo hearing continued, until the*



IN THIS ISSUE

Attorney General Opinion
on Revenue Mitigation

CEQA & Greenhouse Gases

CALAFCO Approves
Bylaws; Opens Nominations

New LAFCo Policies
Implemented

Tips on Effective Use of
LAFCo Counsel

Legislative Report

The Sphere

CALAFCO Journal

July, 2010

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

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FROM THE CHAIR

Will Williamson Wither?



Roger Anderson
Chair, CALAFCO
Board of Directors

While I was a child in Fargo, North Dakota, my father was a wholesale fruit and vegetable buyer. I remember his stories after his travels to the citrus orchards and the berry and lettuce fields in California, and I was truly amazed that even the rich soils near home were so limited in our crops compared to what was possible in California. I could not imagine a place where oranges grew so well.

Many years later when I joined the LAFCo community, I took particular pride in the fact that a State policy was to maintain, preserve, and encourage our agricultural advantage. This policy is clearly stated in the California Constitution, Cortese-Knox-Hertzberg and General Plan Law, and most notably in the Williamson Act. I believe that this far-sighted State policy that began in the mid 1960s is greatly responsible for the fact that direct agricultural production continues to have a greater value than electronic manufacturing.

Also the processing of agricultural products adds an additional 50% to the agricultural GDP. Agriculture and its processing represent more than a \$50 billion contribution to our economy!

The readers of *The Sphere* well understand the LAFCo policies that steer development away from prime agricultural lands

and the directive that counties and cities also recognize the importance of such real estate in their General Plans. However the presence of the Williamson Act makes it easier for Californians to continue agricultural activities by allowing property tax relief for willing land owners. The Williamson contracts now cover about half of California's farm land or almost a third of all privately owned real estate.

Because of this great interest in Williamson contracts, the State has refunded about \$875 million in direct subventions to counties with contracts since 1972. However this spring, the State subventions were cut to a mere \$1000 divided among all counties! This is a truly minor fraction of the \$38.7 million in subventions in 2005-06.

At the CALAFCO board meeting in May, we voted unanimously to ask the Governor to continue sufficient subventions to support established State policy about agricultural land preservation. This was a spontaneous and enthusiastic action and a recognition that the Williamson Act helps LAFCos do their job. We willingly joined many others in state and local government in support of funding Williamson Act subventions.

Continued on next page

Will Williamson Wither?

Continued from page 2

Now the future of the Williamson Act is very uncertain. There is a clear mandate in the state constitution and law about preservation of prime agricultural land, but presently there is no alternative to Williamson.

If the minimum funding continues, California counties will have to pay for as long as nine more years the value of their Williamson contracts. This could be more than \$300 million. This county liability will exist whether or not new contracts are written. It seems that this county revenue loss is rather unjustified for what is certainly a state program.

Perhaps the Williamson Act must evolve, but I and many others in LAFCoS believe that it should not wither.



Agricultural lands on Ventura County's Oxnard Plain

FROM THE EXECUTIVE DIRECTOR

Report from Sacramento

Progress on CALAFCO Legislation



Bill Chiat
Executive Director

Despite no state budget, other legislation continues to work through the process this year. CALAFCO has been following a number of bills. We have already had success with four bills that have been signed by the Governor, and one bill we opposed has died. Others continue in the process.

Here is a summary of the bills in process or signed into law. Be sure and catch the companion article on AB 853 (Arambula) that provides some depth on the bill and current status.

BILLS SPONSORED BY CALAFCO

AB 2795 – Assembly Omnibus Bill This annual bill sponsored by CALAFCO makes non-substantive changes to the Cortese-Knox-Hertzberg Local Government Reorganization Act. Rather than run separate bills for each item we lump them into a single “omnibus” bill. CALAFCO sponsors this bill every year. It is a consensus bill, meaning that we vet all items with stakeholders and the minority party caucus before including them in the bill.

Items in the 2010 bill include:

- ◆ Definition of “divestiture of power” (§56037.2).
- ◆ Clarification in formatting for the language in §56100.
- ◆ Redefines “executive officer” for special district selection process to allow commission to appoint a designee other than the EO to conduct the process (§56332.f).
- ◆ Clarify categories for determining special district revenues for the districts’ apportionment of LAFCo share in §56381(b).

- ◆ Corrects several references regarding who calls elections: §57075.5(b), §57127, §57129.
- ◆ Specifies that a LAFCo may initiate proposals by resolution of application (§56375).
- ◆ Allows executive officers to call a meeting of the special district selection committee when a vacancy is anticipated to occur within the next 90 days (§56332.b).
- ◆ Allows local agencies to extend the property tax negotiation period an additional 30 days by written notification and extends from 15 to 30 days the period to renegotiate a property tax exchange agreement if LAFCo changes a proposal (R&T §99).
- ◆ Specifies that two city council seats would be up for election at the first election following incorporation regardless of the system of election chosen (§57379).

AB 2795 passed the legislature without opposition and was signed into law by the Governor on 7 July 2010.

BILLS SUPPORTED BY CALAFCO

SB 894 – Senate Omnibus Bill This bill makes non-substantive changes to a wide range of local government laws other than CKH. The bill contains several items requested by CALAFCO, including language which brings consistency to the statutes of limitations to challenge city and county boundary change decisions. It also eliminates an antiquated code section on time limits.

The bill has passed the Senate and is on the floor of the Assembly for action.

Continued on page 5

Bylaw Amendments Approved by Membership

Over the spring the CALAFCO membership participated in a mailed ballot to amend the Association Bylaws. Concluding on Friday, 9 July, the membership overwhelmingly approved the Bylaw amendments recommended by the Board of Directors. The Bylaws were approved on a 51-2 vote, with four members not voting.

The amendments are designed to improve the process to elect members to the Board of Directors. Previously all 15 Board

members were elected at-large by all members. Under the approved revisions, Board members will now be elected by four regions. It is hoped this will result

in a stronger Board that better represents the diverse interests and needs of LAFCOs around the state. The amendments also increased the Board by one member to 16, four from each region.

The revised process will take effect this fall at the CALAFCO annual conference in Palm Springs. Under the new process each of the four regions will elect its four Board members during regional caucuses on Thursday, 7 October.

Details on the approved amendments are in the members section of the CALAFCO website.



CALAFCO Regions for Board Elections

Nominations Open for CALAFCO Board of Directors

Nominations are now open for the CALAFCO 2011 Board of Directors elections.

The Board elections this fall mark a major revision to the procedure for how Members are elected. For the first time Members will be elected by regions, as recently approved by the membership. Board Members will be elected during regional caucuses at the CALAFCO annual conference.

Serving on the Board is a unique opportunity to work with other commissioners throughout the state on legislative, fiscal and operational issues that affect us all. The Board meets four times a year at alternate sites around the state. The time commitment is small and the rewards great!

By decision of the Board all 16 seats will be up for election in October. There are four seats for each region, designated for: county, city, special district, and public member. For this first year under the new procedures, two of the seats in each region will be designated as two-year terms and two will be designated as one-year terms. The terms will be determined by lot after the elections. All subsequent elections will be for two-year terms. Any regular or alternate commissioner from a member LAFCO in good standing may serve on the CALAFCO Board.

Nominations will be accepted by the CALAFCO Recruitment Committee until **Friday, 3 September 2010**. Nominations will also be taken from the floor during the regional caucuses.

Detailed information and nomination forms are available on the CALAFCO website at www.calafco.org.

CALAFCO Achievement Award Nominations

Each year at the annual conference CALAFCO presents the Achievement Awards. These recognize outstanding achievements by dedicated and committed individuals to LAFCO and LAFCO principles throughout the state.

Recognizing individual and organizational achievements is an important responsibility. The various award categories provide visible recognition and support to those who go above and beyond in their work to advance the principles and goals of Cortese-Knox-Hertzberg. Any individual, LAFCO, associate member or organization may nominate people and agencies that deserve this important recognition.



Deadline for nominations is **Wednesday, 8 September**. Information and nomination forms are available at www.calafco.org.

Awards will be presented at the annual conference awards banquet on 6 October at the Hilton Palm Springs Resort.

Report from Sacramento

Continued from page 3

AB 419 (Caballero) – Election Ballots clarifies an ambiguity in CKH by requiring a city or county to place an item on a ballot within 45 days of a request from a LAFCo. Current law does not have such a requirement which has resulted in at least one instance where a Board refused to take action on an item and it was not placed on the ballot. CALAFCO worked with the Elections Clerks Association to address some other language which improves consistency between CKH and the Elections Code.

The bill was signed into law by the Governor on 7 July 2010.

AB 1668 (Knight) – Council Elections After Incorporation This bill is essentially the same as AB 18 last year which was vetoed by the Governor. Among other things it brings consistency to the number of council seats up for election at the first election following incorporation. This bill has identical language for this provision as AB 2795. Since Mr. Knight carried this for us last year, he asked to include it as part of his larger bill this year.



The bill passed and – *surprise* – was signed into law by the Governor on 7 July 2010.

SB 1023 (Wiggins) – Expedited Reorganization of MIDs and RIDs Provides an expedited process for reorganizing Resort Improvement Districts and three specified Municipal Improvement Districts into community service districts, or in one case, a recreation and park district. The process is voluntary for the affected districts.

The bill was signed into law by the Governor on 9 July 2010.

BILLS WATCHED BY CALAFCO

AB 711 (Charles Calderon) – Loan for East Los Angeles Incorporation Studies – Transfers \$45,000 to the Controller for allocation to Los Angeles LAFCo for a loan to the East Los Angeles Residents Association. This would be the first time legislation has passed to provide funds for the State Controller to allocate to fund incorporation studies as provided in CKH. The legislation is specific that the process must be consistent with all provisions of CKH.

After almost two years, the bill passed and was signed by the Governor on 7 June 2010. It was an urgency measure and took effect immediately.

AB 1859 (Norby) – Would have placed redevelopment agency project areas under LAFCo review. It added the power to review and approve, deny or conditionally

approve a new project area or the expansion of an existing project area. CALAFCO raised concerns about the bill but did not take an official position. The League and CSAC opposed. It died in committee with no supporting votes.

SB 1232 (Romero) – Extension of Validity of East Los Angeles Petition Signatures – Would have extended the time period for the validity of petition signatures for a specific incorporation. It was not heard in committee and subsequently failed.

BILLS OPPOSED BY CALAFCO

SB 211 (Simitian) – Formation of the Santa Cruz Regional Open Space District – Would have allowed the Santa Cruz

Board of Supervisors to create a regional open space district circum-venting the LAFCo process. It did not provide a funding source for the district, leaving it to a future vote of the residents. CALAFCO opposes special legislation to create local agencies which bypass LAFCo. The bill was withdrawn by the author and subsequently amended for another purpose.

AB 853 (Arambula) – Disadvantaged Unincorporated Communities – CALAFCO has spent substantial time on this bill, particularly as there was a flurry of amendments and activity in June. Its intent is to begin addressing the issue of infrastructure deficiencies in disadvantaged unincorporated communities. See the separate article “*Wrong Side of the Tracks*” for the background and current content of the bill. CALAFCO currently has an oppose position. The bill is scheduled to be heard by Senate Appropriations in early August.

RESOURCES ON LINE

Legislative resources are available on the CALAFCO website and are updated regularly. Check these out at www.calafco.org:

- ♦ **Greatest Hits 2010** – Prepared by the Senate Local Government Committee, this handy guide lists all the local government bills and oversight hearings from the current legislative year.
- ♦ **CALAFCO Legislative Update** – The Legislative Tab on the website includes the current status of CALAFCO bills, links to legislation and chaptered bills and CALAFCO position letters.
- ♦ **Search Legislation and California Law** – The Legislative Tab includes handy links to search any bill (current or past) along with California Law by code section.

WRONG SIDE OF THE TRACKS

AB 853: Disadvantaged Unincorporated Communities Infrastructure

Many LAFcos have expressed concerns about infrastructure deficiencies – especially drinking water and sanitary services – in disadvantaged unincorporated communities. Sessions at recent CALAFCO conferences and workshops have focused on annexations and other potential remedies. The root causes are financial and political. Cities are reluctant to annex the areas as they have no source of funds for the roads, water or sewer to bring the community up to standards. Creating a new local agency is equally difficult. Many of these communities are unable to muster the political strength for boundary changes or to get adequate services. Yet according to the Rural Legal Assistance Foundation over a million Californians live in these disadvantaged communities. In February, 2009 Assembly Member Juan Arambula (I-Fresno) introduced AB 853 to begin to address the issue.

The bill as originally introduced would have essentially forced annexation of disadvantaged communities if 25% of the registered voters petitioned the Board of Supervisors. It removed most of the discretion of LAFCo to deny an application and directed a process for LAFCo to impose a property tax exchange agreement if the city and county did not reach one. The legislation eliminated rezoning and protest hearings. It also added new definitions to CKH for island and fringe communities. Special districts or private companies that might be the source of services were not addressed.

CALAFCO wrote a letter of concern on these and other issues and took a Watch position. Ultimately the bill passed the Assembly in May 2009 with the author's commitment to work with CALAFCO and other stakeholders on their concerns. The bill went to the Senate and sat in Rules for a year until May 2010. CALAFCO met with the sponsors once in January and then heard nothing despite repeated requests.



On 9 June 2010 the author made a major amendment to the bill. It moved from a focus on forced annexations to comprehensive service planning by LAFCo. The language which circumvented LAFCo process and discretion was removed. In its place was a new requirement for LAFCo to prepare comprehensive service plans for infrastructure deficiencies in each community and to monitor local agency compliance with the plan. It prohibited LAFCo from changing any sphere of influence unless all relevant local agencies were in compliance with the plan. The bill still allowed residents to petition the Board to apply for annexation to LAFCo, but it also allowed annexations to a city of territory within



Concerns over health and safety concerns in disadvantaged communities such as failing septic systems is fueling the bill

or adjacent to a sphere even if it was not contiguous to a current boundary.

Although the amended bill restored the CKH annexation process once a resolution of application was received from the county (prezoning,

property tax exchange agreement, protest provisions, etc.), nonetheless, based on our concerns with the amendments CALAFCO took an OPPOSE position, prepared written comments, and began a series of meetings with the sponsors, author and other stakeholders.

The bill was heard at Senate Local Government Committee on 16 June, and CALAFCO expressed objections. Several Committee members are former LAFCo commissioners, and Senator DeSaulnier in particular, supported our concerns. After it became clear that there were not the votes for passage, Mr. Arambula asked to work on the bill and return later in the month.

Based on our work, the bill was significantly amended again on 23 June to eliminate the comprehensive service plans and most of the definitions. The new language requires – as part of the regular sphere update process – LAFcos to only identify disadvantaged unincorporated communities and any water, wastewater or fire protection infrastructure deficiencies that exist in them. Further, the implementation date was extended to July 1, 2011 to allow time to plan for the requirement and obtain 2010 census data.

During the 30 June Senate Local Government Committee hearing, CALAFCO acknowledged that the new language addressed most of our concerns. A further amendment was agreed to at the hearing that would give LAFcos discretion

in defining what constitutes a “disadvantaged inhabited community” beyond the 12 registered voters currently defined in CKH. The current 1 July 2010 version of the bill contains this additional amendment requested by CALAFCO.



Current bill requires LAFCo to identify and assess water, waste-water and fire deficiencies when doing a sphere update

The Association restated its concern about creating an unfunded mandate that would have to be passed on to the cities, counties and special districts in each LAFCo as part of the budgeting process. The Association did not remove its Oppose position pending review by the Legislative Committee. CALAFCO also asked that a small change made in an earlier amendment be reversed. That amendment could

force the review of every sphere in the state, even when an agency does not or could not provide water, sewer or fire services to a disadvantaged community. On 13 July the author agreed to this additional amendment. The bill is still silent on special districts, which often are the most likely local agency to provide the targeted services.

Following the hearing, Assembly Member Arambula met with CALAFCO staff and expressed his appreciation to CALAFCO for working with him on the bill. He committed to continue to work with us on the bill over the next month before it is heard in Senate Appropriations in early August. The bill also has to go to Senate Rules before returning to the Assembly for reconsideration. The last date for legislative action on all bills is currently 31 August. This date is likely firm as this is the end of the two-year legislative session.

What will happen remains to be seen. The bill has stayed alive for two years because there is empathy for the problem among legislators in both houses. They see the identification of the communities and the infrastructure deficiencies as a first step. With that information legislators believe a more knowledge-based approach could be debated for addressing the health and safety infrastructure deficiencies. Right now there is only speculation on actual needs and costs. They also see LAFCo as an objective third party that could prepare the inventory.

CALAFCO will continue to work with the author and sponsors to address the unfunded mandates imposed by the bill. The Legislative Committee is meeting in late July to reconsider our current Oppose position and to better understand the work level necessary for LAFCos to meet the requirements of the bill as amended.

Senator Dave Cox Dies

Chairman of Senate Local Government Committee

From the Sacramento Bee: State senator and former Assembly Republican leader Dave Cox died on July 13th, 2010, ending more than two decades of public service by a fiscal conservative and political tough guy who savored a good joke and loved to laugh - even at himself.

His family said Cox died at home, surrounded by friends family, after a 13 year battle with prostate cancer.

"A devoted family man, he always found time to serve his community and constituents," said the statement from the family. "Dave took great pride in public service and making government work for the people it serves."



Cox, 71, served on the Sacramento Municipal Utility District Board and as a six-year Sacramento County supervisor before joining the Assembly in 1998 and Senate in 2004.

As a county supervisor, Cox consistently pushed for more "projects on the ground," or PIGs, prompting county officials to present him with a live pig when he left for the Capitol.

"A moderate conservative, Cox has brought common sense and business experience to his work on the (county) board, and he has been a champion for smarter and more efficient government," The Bee said in endorsing him for the Assembly in 1998.

At the Capitol, Cox crafted a reputation as gruff, feisty, irascible, combative - a passionate advocate and no-nonsense inquisitor who didn't back down from a verbal fight but had a warm heart, quick smile and ready quip.

From CALAFCO: Senator Cox served as Chairman of the Senate Local Government Committee, presiding at its most recent meeting on June 30th. CALAFCO Executive Director and Legislative Committee Chair Bill Chiat acknowledged that Cox was not a champion of LAFCo at the Legislature. But, he added: "Senator Cox always treated CALAFCO with respect. He listened to our concerns and opinions, and while at times disagreed with us, he was clear and consistent in his message." "There are many bills that Senator Cox supported CALAFCO, always voting in support of our annual C-K-H omnibus bill."

He will be missed.



Around the State

News and Best Practice Tips



Contra Costa LAFCo Levee Tour

firsthand look at the physical condition of the levees.

One of our most dynamic reviews has been the fire/emergency medical services MSR. Following the release of this MSR, the Commission formed an ad hoc fire committee. The

committee held five meetings to facilitate discussions and receive additional public input regarding the governance and SOI options identified in the MSR report. Subsequently, a number of independent citizen groups and task forces have been formed to continue the dialogue on various issues identified in the MSR report. In addition, one of the fire districts recently reconstituted its governing board from the previous Board of Supervisors to a new board comprising representatives from the member agencies. In addition, Contra Costa LAFCo hosted two Fire Service Workshops to continue information sharing, problem identification, and discussion of opportunities and next steps.

The MSR process has been an interactive and productive experience; even our local media has shown some interest. The MSR reports are a wealth of information and provide LAFCo, local agencies, other stakeholders and the public an opportunity to learn about the range of municipal services provided in the county.

Contributed by Lou Ann Texeira, Executive Officer, Contra Costa LAFCo.

SAN MATEO LAFCo New Public Member

On May 19, 2010, the San Mateo Local Agency Formation Commission (LAFCo) voted to appoint **Linda Craig** as the new public member to the Commission. Ms. Craig was selected based on her lengthy and active participation in LAFCo and California State Association of LAFCo activities as the Alternate Public Member and for her broader professional experience in local government including positions in city finance and administration and the League of Women Voters.

Ms. Craig will fill the public member position previously held by **Howard Jones**. Mr. Jones, who was honored by the Commission with a resolution on May 19, served on LAFCo since 1998 and participated in a number of complex

CONTRA COSTA LAFCo MSR Mania!

Contra Costa LAFCo finished a marathon of baseline municipal service reviews (MSRs), including service specific (countywide), sub-regional (primarily cities) and agency specific.

Since late 2007, we have completed countywide MSRs covering health care, water/wastewater, fire and emergency medical, reclamation, cemetery, parks/recreation, mosquito/vector control and resource conservation services. Our final countywide baseline review will begin in FY 2010-11 covering police services. In addition to the countywide reviews, we have also completed sub-regional MSRs covering primarily city services (19 cities), along with several agency specific reviews.

We accomplished all of this with help from a number of exceptional consulting firms – all of whom are CALAFCo Associate Members – and with the Commission's diligence (and endurance).

The MSR process has been enlightening. It has provided a comprehensive overview of municipal services in the County; showcased resource sharing and best practices; identified service, infrastructure, fiscal and other challenges; provided a basis for SOI updates and future boundary changes; afforded an opportunity to update and digitize boundary/SOI maps; and served as a catalyst for further discussions and activities.

The Reclamation Services MSR, covering 13 reclamation districts, presented a unique opportunity to learn about the delta levee system. California Water Code identifies eight western Delta islands as critical to controlling salinity in the Delta, protecting water quality for all water users in the state. Of these eight, five are protected by reclamation districts in Contra Costa County (Bradford, Holland, Hotchkiss, Jersey and Webb). In June 2009, we boarded a boat and toured the levee system. The view from the water provided a different perspective and

proposals and studies such as the Midpeninsula Regional Open Space District Coastal Annexation, Consolidation of the Coastside Fire Districts and other studies including the health care districts and the harbor district. He served as Chair in 2002 and 2007 and regularly served on the LAFCo Budget Committee.

Contributed by Martha Poyatos, Executive Officer, San Mateo LAFCo

SONOMA LAFCo Commissioners Appointed

Sonoma LAFCo welcomes our returning Commissioners! **Jean Kapolchok**, the Public Member, was reaffirmed by the Commission for a second term of office. **Pam Stafford**, from the City of Rohnert Park, became a regular City Member while **Steve Allen**, from the Town of Windsor, assumed the Alternate City Member position. **Mark Bramfitt**, from Valley of the Moon Water District, was elected to a second four-year position as a regular special district representative, without opposition. Staff looks forward to these Commissioners' participation!

Contributed by Carole Cooper, Assistant Executive Officer, Sonoma LAFCo

TULARE LAFCo Commission Contracts with COG for Staff Services

On June 9, 2010, the Tulare LAFCo put the finishing touches on the implementation of a new staff services agreement which will transfer the staffing for LAFCo from the County of Tulare to the COG, the Tulare County Association of Governments (TCAG). TCAG, which is also designated an MPO, assumed those responsibilities on July 1, 2010.

At the same time the commission accepted the resignation of **George Finney** who had been the executive officer since 1990 and appointed **Ben Guiliani** as the new EO effective July 1, 2010. Mr. Guiliani, currently a TCAG Senior Regional Planner, previously served the commission as an analyst for nearly four years before his transfer to TCAG where he has taken the lead role in preparing and maintaining the Regional Transportation Plan and Program.

The existing support staff for the commission will be transferred from the county to TCAG so that

the whole process will be relatively seamless with no other changes in staffing. In fact the only physical change required is that **Marcos Segura**, the existing analyst, will move his office across the hallway from County RMA to the TCAG offices. The commission even agreed to keep Mr. Finney, who retired full-time from the county in 2008, around for awhile as a part-time assistant to help with the transition, provide training and perform other duties as determined by the EO.

While it's too early to tell if the TCAG arrangement will serve as model for other LAFCos, the concept of combining staffs from two regionally-oriented planning agencies creates an opportunity for better coordination and problem solving on regional planning issues. In our case it also allows for potentially greater staffing support since besides Mr. Giuliani, two other former LAFCo analysts currently are employed as regional planners at TCAG.

In taking this step the commission recognized they were treading on new ground so they made sure the TCAG agreement included a commitment that requires services to the commission have a priority. This will be closely monitored during the first years of the agreement.

Contributed by Marcus Segura, Analyst, Tulare LAFCo

PLAN ON ATTENDING SHAPING CALIFORNIA'S FUTURE: TODAY'S VISION - TOMORROW'S REALITY

at the Hilton Palm Springs Resort
Hosted by Riverside LAFCo

**REGISTRATION AND ROOM RESERVATION
MATERIALS NOW AVAILABLE AT
www.calafco.org**

CEQA Authorities Clear the Air

By Yana Welinder, Colantuono & Levin, P.C.

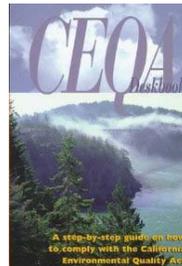
2010 has brought significant developments with respect to the California Environmental Quality Act (“CEQA”). In March, new amendments to the State CEQA Guidelines provided much-needed guidance for analysis of greenhouse gas (“GHG”) emissions. Further, the California Supreme Court issued opinions in February and April enforcing short statutes of limitations for challenges to projects described in facially valid Notices of Determination (“NOD”) or Exemption (“NOE”).

2007’s SB 97 (Dutton, R-Rancho Cucamonga) requires local agencies to consider GHG emissions when reviewing projects under CEQA. The new amendments to the CEQA Guidelines regarding analysis and mitigation of GHG emissions pursuant to this statute became effective March 18, 2010 and are required to be incorporated into local CEQA guidelines by July 16, 2010.

The amendments provide that a local agency should make a good-faith effort in an initial study, based to the extent possible on scientific and factual data, to describe, calculate, or estimate GHG emissions resulting from a project. While local agencies may want to quantify GHG emissions from large commercial projects, emissions from smaller projects are more appropriately assessed by a qualitative analysis, whereby the agency determines compliance with performance standards (e.g., energy-efficiency standards for residential construction). Local agencies are encouraged to establish thresholds of significance with respect to GHG emissions but many can be expected to adopt thresholds currently being developed by air quality districts, as permitted by the regulations.

Environmental impact reports (“EIR”) must also address GHGs and state whether a project is inconsistent with regional GHG reduction plans and specific plans which address GHGs. GHG emissions may be mitigated, for example, by designing a project to reduce emissions, sequestration of GHGs from being released into the atmosphere (like proposed underground carbon storage), and off-site measures to offset the carbon emissions (like forestry projects). The Attorney General’s Office has identified other GHG mitigation measures at: http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf. The amendments allow local agencies to analyze GHG in a general plan or other program document and incorporate that analysis into subsequent CEQA documents. This will be a valuable means to reduce the burden of CEQA compliance on this topic.

Committee for Green Foothills v. Santa Clara County involved an EIR for a project at Stanford University. To comply with a mitigation measure provided in this EIR, the County authorized an agreement for development and maintenance of certain trails and filed a NOD, implicitly determining that the agreement did not constitute a new project requiring further CEQA review. 171 days later, plaintiffs challenged the county’s approval of the agreement, claiming a 180-day statute of limitation should apply pursuant to Public Resources Code § 21167(a) because the county approved a project “without having determined whether the project may have a significant effect on the environment.”



The Supreme Court held that the claim was time-barred by § 21167(e), which requires action with 30 days of an NOD because “the question is not the substance of the agency’s decision, but whether the public was notified of that decision.” The Court found the Legislature intended the filing of an NOD to

provide certainty so that “[d]evelopers would [not] have to wait a full 180 days before embarking on a project to avoid potential interruption by litigation.” However, to invoke the 30-day period, an NOD must set forth all information required by CEQA.

In *Stockton Citizens for Sensible Planning v. Stockton*, the Supreme Court held a facially valid NOE also triggers a bright line period of 35 days for challenge, even if the challenge alleges procedural flaws in the decision which is the subject of the NOE. Thus, when Stockton first approved a master development plan and related EIR for a large urban project and subsequently approved the construction of a Wal-Mart under that plan, filing a legally sufficient NOE, any challenge to the approval of construction of the Wal-Mart had to be brought within 35 days of the NOE.

Thus CEQA now requires GHG analysis in initial studies and CEQA documents. However local agencies tackle this new requirement, agencies should promptly file an NOD or NOE to obtain the benefit of the short CEQA statutes of limitations. In the State that is at the forefront of environmental law, rapid development in this area is inevitable. As always, we will keep you updated on all intricacies of CEQA.

Yana Welinder is an associate in Colantuono & Levin’s municipal advisory team. Her practice includes public law, land use regulation, planning, CEQA, election law, conflicts of interest, and public utilities. Colantuono & Levin is a CALAFCO Gold Associate Member.

SAN DIEGO LAFCO ADOPTS “CONSULTATION” POLICY

By Robert Barry, Local Government Analyst, San Diego LAFCo

In the review of proposed jurisdictional changes involving cities and special districts, a recurring issue for the San Diego LAFCo has been service, financial, and land use conflicts between affected jurisdictions. Unless these conflicts are identified and successfully resolved at an early stage, the subsequent LAFCo proposal review process can get complicated and delayed.

San Diego LAFCo has recently adopted a local policy (Legislative Policy L-107) that establishes a consultation procedure for affected public agencies and interested parties to identify, discuss, and potentially resolve jurisdictional conflicts associated with development projects that require LAFCo discretionary approvals.

Legislative Policy L-107 requires that, *prior* to submission of a proposal requesting LAFCo consideration of a city or special district jurisdictional change, representatives from the affected cities, special districts, the County of San Diego, applicable local community planning groups, and other interested

organizations shall meet at the earliest possible stage for the purpose of identifying and resolving issues associated with the proposed jurisdictional change.

The policy’s consultation process is intended to identify jurisdictional concerns related to: differing development standards; existing and/or planned land uses and zoning (including densities, community character, and appropriate jurisdictional transition areas); the existing and/or planned provision of governmental services (including potential impacts to service levels or financial ability to sustain service levels); and, any other local community or governmental concerns.



Policy L-107 specifies that, if the consultation process results in an agreement between the jurisdictions, the subject proposal’s LAFCo

application will include signed confirmation by representatives of the affected agencies. The policy also includes a procedure for the Executive Officer to waive the required jurisdictional consultation if the subject proposal is considered routine. This administrative waiver procedure is intended to facilitate the expedited processing of proposals where there is certainty that no significant jurisdictional impacts or issues are involved.

If the affected jurisdictions have completed the policy’s required consultation but have not been able to reach agreement on the subject proposal’s identified jurisdictional issues, the policy specifies that the affected agencies will provide written confirmation to the Executive Officer regarding the areas of disagreement and the desired outcome. The subject proposal would then proceed to the Commission according to provisions in State Law and applicable local policies and procedures.

Legislative Policy L-107 is available for download from the San Diego LAFCo website:

<http://www.sdlafco.org/forms/Legislative%20Policy%20L-107.pdf>

Solano LAFCo Revenue Protection Policy

Continued from front page

applicant has met with the affected agencies and made a good faith effort to reach agreement with those agencies on appropriate mitigation.” Finally, the amended policy stated, “If the applicant and the affected agencies have reached agreement on permanent, annual mitigation for the impacts to affected agencies, LAFCo will normally include the mitigation measures in its terms and conditions approving the change of organization. If the parties have failed to reach agreement, LAFCo shall hear from both sides and determine an appropriate mitigation, if any, and impose that mitigation to the extent it is within its powers. If the needed mitigation is not within LAFCo’s authority and approval would, in the determination of the Commission, seriously impair the District’s operation, the Commission may choose to deny the application.”

Soon after adoption of the Policy, one of Solano LAFCo’s funding agencies requested an opinion from the Attorney General’s office on the ability of LAFCo to require financial mitigation. The exact question put forward was “May a Local Agency Formation Commission (LAFCo) require the payment of a mitigation fee (either on a one-time basis or a recurring basis) to a public agency as a condition of approval of a land boundary change among public agencies?”



The Attorney General’s Office responded to the request with an informal letter opinion, rather than a formal published opinion, because the question called for only a minor extension of the reasoning in some of their previously published opinions¹. The conclusion of the AG’s Office was that “A Local Agency Formation Commission (LAFCo) may require the payment of a mitigation fee (either on a one-time basis or a recurring basis) to a public agency as a condition of approval of a land boundary change among public agencies.” The letter goes on to cite LAFCo’s statutory authority in these matters.

So how does Solano LAFCo make the new requirement work? Solano LAFCo now conditions every city annexation to state that the

funds that a fire district loses through the tax exchange agreement must be returned to the district on an annual basis with a CPI increase. The Executive Officer does not sign the Certificate of Completion until the city and fire district have reached a formal agreement for exchange of these funds.

If you would like more information on Solano LAFCo’s policy or would like a copy of the Attorney General’s written response please contact Shaun Pritchard, Executive Officer at 707.439.3897 or eo@solanolafco.com.

¹ See 91 Ops.Cal.Atty.Gen. 33 (2008); 89 Ops.Cal.Atty.Gen. 173 (2006).

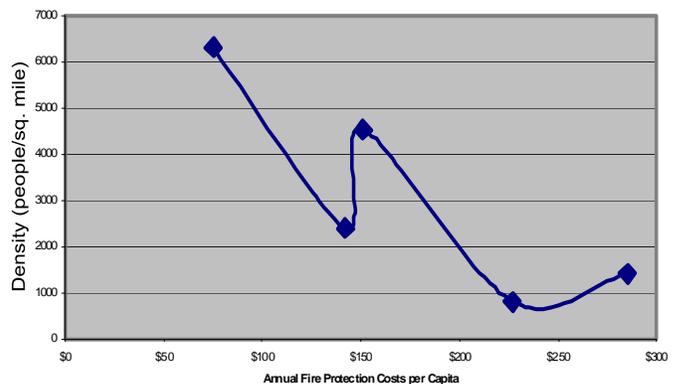
Read the AG’s Solano LAFCo opinion as well as other LAFCo-related **AG Opinions and Court Decisions** on the CALAFCO website at:
www.calafco.org/Court_Decisions.html



Higher Densities Result in Lower Fire Protection Costs

Submitted by Pat McCormick, Santa Cruz LAFCo Executive Officer

Pulling some data out of Santa Cruz LAFCo’s municipal service review shows that higher residential densities result in lower per capita fire protection costs. The five agencies are all urban fire agencies in Santa Cruz County, and they all offer substantially the same level of services. There are just a few data points, but the trend line is compelling.



Population Density v. Fire Protection Costs for 5 Urban Fire Agencies in Santa Cruz County

HOW TO USE YOUR LAFCO LEGAL COUNSEL

“I am not a potted plant”

Some Suggestions From P. Scott Browne

This was Attorney Brendan Sullivan's memorable response at Senate Hearings on the Iran Contra scandal in 1987 when Senator Daniel Inouye grew impatient with the lawyer's frequent objections and suggested that his client, Oliver North, should be the one to speak up. As LAFCo legal counsel, I am sometimes tempted to remind LAFCo Commissions and executive officers of this point. LAFCo legal counsel is not just there as a “potted plant” ornamenting the Commission meetings. We can be helpful to the decision-making process if brought into the issues early enough and when our input is properly integrated into the process.

I have represented LAFCos for nearly 25 years and have worked with some nine different LAFCos over that period. As a result of this experience, I have found that commissions and staff frequently overlook the additional resource of their legal counsel. As a result, legal counsel, if heard at all, often ends up being the “spoiler”—the one who raises issues as to the propriety of an action at the hearing, causing unwelcome delays or worse.

That this happens is probably due to the structure of the relationship. LAFCo legal counsel is always a part-time assignment. (In the case of many LAFCos, a very part-time assignment). LAFCo counsel, whether a public or private attorney, is busy working with many other clients and tasks. The counsel is usually in a distant office and seldom reachable on the first phone call. When staff realizes they have an issue, it is often at a point where

the staff report has to get out that day. If the attorney is not immediately available, the report goes out without legal input. After this happens a few times, it becomes the norm.

At Commission meetings a similar process occurs. Counsel for public agencies with any experience know that the commissioners tend to have strong opinions and may not look favorably on advice interjected by legal counsel.



This is particularly true when the advice may conflict with what a commissioner wants to do. Nor do staff like their presentations to be questioned. So the “safe” position for legal counsel is sit quietly like the “potted plant” until a specific question is directed to counsel. Only when there is a clear and imminent legal threat is counsel likely to intervene to do damage control absent an invitation by the commission.

The result of this dynamic is that legal counsel is often underutilized. Most of the LAFCo legal counsel that I know are bright, knowledgeable individuals, eager to help. Yet their knowledge and energy is seldom tapped to assist the LAFCo process.

What can be done about this? I have a few suggestions for staff and commissions, based on my experience:

SUGGESTIONS FOR STAFF

1. *Communicate with counsel early in the process.* If there is a potentially controversial or difficult issue, talk to your counsel early in the process. Your attorney may have a completely different approach or concern that it is helpful to know before you have committed LAFCo to a particular course of action
2. *Regular meetings.* The executive officer should establish with counsel a regular monthly meeting time to go over the issues and reports for the next commission meeting. The meeting needs to be set early enough before the report deadline that counsel recommendations can be incorporated into the report. The meeting time needs to be the same each month or set far enough in advance to accommodate legal counsel's crowded schedule.
3. *Use email.* Attorneys love email because it forces staff to put a issue succinctly in writing and the attorney can respond at 9:00 o'clock at night after they have dealt with all the other issues of the day. However, understand that if you haven't gotten a response in a couple of days, the email has probably gotten buried. Send a follow-up email or call to check if the attorney is in a position to respond. We attorneys are not in control of our schedules (which are set by the Court or board) so there can be weeks when we are totally unavailable.

continued next page

“Not a Potted Plant”

SUGGESTIONS FOR COMMISSIONS

1. *Include Legal Counsel in pre-meeting discussions.* It is common for the chair of the commission to meet or have a phone conference with the executive officer in preparation for the meeting. The chair should encourage the participation of legal counsel in these meetings to surface any potential legal issues so that the chair be prepared to deal with them at the meeting.
2. *Ask Legal Counsel on a regular basis for input during the meeting.* Counsel should be invited to comment on items on a regular basis. Sometimes we attorneys have good ideas that can assist the commission in reaching its decision. This is particularly important when the commission is involved in controversial decisions.



3. *Schedule closed sessions on controversial items before consideration.* If counsel has been involved early enough in a controversial item, we may recommend agendaizing a closed session before the item is considered. Such a closed session is permitted under the Brown Act where counsel determines there is a “significant exposure” to litigation. In such a session we can provide advice to commissioners on the legal issues they face and help them avoid legal pitfalls. This can be done far more

frankly and effectively in such a closed session than if blind-sided with the issue during the open meeting.

If these suggestions are regularly implemented, your legal counsel can stop being “a potted plant” at the meetings and become an important contributor to the effectiveness of your LAFCo.

Scott Browne is Legal Counsel to Nevada, Butte, Plumas, Colusa, Lake and Solano LAFCos. The Law Offices of P. Scott Browne is a CALAFCO Associate Member.

San Diego LAFCo Approves New Policy Guidelines Addressing Water Supply & Reliability

On May 3, 2010, the San Diego LAFCo adopted two new policy statements to provide guidance when reviewing proposals for the extension of water services. The policies were adopted in consultation with an advisory committee composed of special district representatives. To kickoff the process, a regional workshop was held in July 2009 that included expert speakers on climate change, weather forecasts and statewide water supply policy issues.

After extensive outreach and analysis, two Policy Guidelines were developed: *Regulatory Policy* for evaluating water supply & availability and a *Legislative Policy* to coordinate the San Diego LAFCo’s broad-based legislative efforts with stakeholders. Each policy guideline provides the commission and staff with parameters for promoting proactive efforts to address existing and future water supply & reliability issues for the San Diego County region.

The *Legislative Policy* provides for taking steps to advocate development of more reliable and diversified water supplies, primarily by local and regional water supply and purveying agencies. LAFCo will also monitor and provide input to various agencies and policy-making bodies to further these goals.



The second guideline, *Regulatory Policy* for processing of proposals, is intended to provide proponents and affected agencies with direction related proposals that could impact water supply & reliability services to existing or new properties.

Water supply agencies will be relied upon to provide evaluation, review and verification of the ability to provide water supply to the affected properties in accordance with the Cortese-Knox-Hertzberg Act and other relevant laws and regulations.

Additional factors have been identified for review, such as demand offset programs, conservation criteria, and alternative water supply projects that could augment overall water supply. The local water providing agency will be asked to provide initial review and analysis to consider the capability to serve.

Copies of the Guidelines are available at: www.sdlafco.org. For questions on these policy guidelines, you may contact San Diego LAFCo at (619) 531-5400 or Harry Ehrlich at harry.ehrlich@sdcountry.ca.gov.

Three American Cities on the Brink of Broke

By Sara Behunek, contributor ♦ May 28, 2010

Several downtrodden cities are on the verge of defaulting on their debt, putting financially encumbered states and taxpayers on the hook to pick up the tab. The National League of Cities says municipal governments will probably come up \$56 billion to \$83 billion short between now and 2012. That's the tab for decades of binge spending; municipal defaults could be our collective hangover.

Municipal bonds, issued to fund public projects such as roads and public buildings, have historically been seen as one of the safest places to invest, which is why 80% of municipal bond holders are individual households and mutual fund investors, explains Jeffrey Cleveland, municipal bond analyst at Payden & Rygel Investment Management.

The average five-year cumulative default rate for investment-grade municipal bonds is less than half a percent, according to Moody's data. That's about one-third the amount of corporate debt defaults.

But municipal defaults are on the rise, and the trend is expected to continue. Last year 183 borrowers -- mostly "risky" municipal issuers, such as suburban developers in Florida -- were unable to make \$6.4 billion of payments. That's way up from 31 defaults on \$348 million just two years earlier, according to Distressed Debt Securities.

In the past year only one city has actually defaulted: Menasha, Wis. (Warrens, Wis. narrowly averted a default by agreeing to forbearance on a state loan.) But that could increase, says Matt Fabian, managing director at Municipal Market Advisors.

Rampant unemployment, tepid consumer spending, and deeply underfunded public pensions are the leading causes of the balance sheet issues cities are having today. But years of political chicanery and poor financial decision-making by city officials are what led to this problem.

Three municipalities have perhaps the most tenuous grips on staying in the black, thanks to all the above factors:

Jefferson County, Ala.

Jefferson County, Alabama's most populous county, with some 665,000 residents, is shouldering about \$5 billion of debt, most of which was issued to overhaul its sewer system in the mid-1990s. But the county's real troubles stem from a 2003 refinancing of the original fixed-rate bonds and a corrupt local government that accepted kickbacks in exchange for mangling the county's portfolio.

In an effort to benefit from lower interest rates, the county switched to floating-rate bonds, much like the variable-rate mortgages that clobbered the housing industry. It also bought billions in interest rate swaps, complex financial vehicles intended to hedge against changing interest rates. Needless to say, those instruments didn't perform as advertised and actually ended up costing the county more in fees.

Most of Jefferson County's bonds are guaranteed by insurers Financial Guaranty Insurance Corp. and Syncora. But those insurers also overextended themselves during the boom. Syncora was unable to pony up its share of a \$71 million payment due last year, and now without a net,

Jefferson County has warned that a Chapter 9 bankruptcy may be in the cards.

Harrisburg, Penn.

Pennsylvania's capital owes \$68 million in bond interest payments this year -- \$3 million or so more than its entire annual budget. The Harrisburg Authority, the governing body that issued the bonds to construct a state-of-the-art trash incinerator, has already been unable to make several payments, and now the county government, which footed the bill last year for a \$775,000 swap fee, is suing for the funds.

The authority is also indebted to the owner of the trash-burning facility, Coventa Energy, to the tune of \$20 million. In April the authority also missed a \$637,500 payment to Coventa, and is now in the process of negotiating a forbearance.

The mayor has said the city won't declare bankruptcy, but the governor has vowed not to bail Harrisburg out, leaving everyone wondering what options are left. In the meantime, the city is sifting through its assets, some of which include arcane Western artifacts purchased by the previous mayor with public funds, to see whether there's anything they can put on eBay before the next payment comes due.

Detroit

To make up for a 2010 budget shortfall of \$280 million, Detroit issued \$250 million of 20-year municipal notes in March. The issuance followed on the heels of a warning from city officials that if its financial state didn't improve, it could be forced to declare bankruptcy. Nonetheless, demand for the bonds was high, thanks in large part to a guarantee that the state would make the payments if the city became insolvent. Michigan has already proved that it has few qualms about stepping in. In early 2009 the state took over the Detroit Public School System, which was facing a budget deficit of more than \$300 million. Now a governor-appointed "emergency financial manager" oversees every penny spent.

Bankruptcy and contagion risk

There's no standard operating procedure for a city or county default. In some cases the state steps in with a loan, and in others the city or county will declare bankruptcy, though that is rare. "There isn't the legal obligation," says Carl Dincesen, an independent tax-exempt-bond risk consultant.

Bankruptcy may not even be the best option, or the most efficient. The city of Vallejo, Calif. has been in Chapter 9 bankruptcy for two years. "Chapter 9 should be a final step, not a first option," Cleveland says. It opens a city up to seizure of public and perhaps even of private property, judicial oversight of city spending, state assumption of the debt, and a lien tax revenues.

Because of the rarity of such bankruptcy filings, experts seem to agree that a Greek-like contagion threat, in which exposure to bondholders is so great that a large-scale default or bankruptcy would cause a massive financial seizure, isn't likely in the U.S.

Still, a major default or bankruptcy would be a shock, just as Orange County's bankruptcy shook investor confidence in 1994. "Because economic growth prospects are bleak, [a bankruptcy would] drain resources away from service divisions and infrastructure finance," says Fabian. "It's going to be a drag on economic growth."

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

Highlights from the 2010 Staff Workshop in Santa Rosa

Over 120 LAFCo staff from around the state attend event hosted by Sonoma LAFCo



Over 60 officials participated in CALAFCO U Fire Services Class at Workshop



Sessions covered a range of topics from Growth in Unincorporated Places (above) to Local Government Finances



Harry Ehrlich and Gwen Plummer confer during general session



CALAFCO 2010 Staff Workshop
Santa Rosa



Betsy Howze, Sonoma County Auditor's Office, leads session on Budget and Accounting for Clerks



Michael Colantuono shares tips on managing effective meetings



The ever-entertaining judges from the LAFCo College Bowl (l-r) Martha Poyatos, Terri Tuck, Brenden Freeman, Elisa Carvalho



Don Lockhart and Diane Thorpe engaged in session



Jim Moose makes a point during CEQA session

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