

June, 2008

Courts Rule on a Record Number of LAFCo Cases

Seven decisions handed down favor LAFCo

Perhaps you've noticed that the last six months have seen an unusually large number of decisions in Superior Courts and the Court of Appeals which affect LAFCos. Several of these include published decisions which positively affect LAFCo. By

our count, there have been three published decisions from the Court of Appeals and four recent Superior Court Decisions in Yuba, Sierra, Ventura, and Monterey counties. These decisions affect everything from annexation challenges to latent powers, incorporation EIRs, and who may serve as a LAFCo executive officer.

The articles in this issue of *The Sphere* highlight the decisions and some of the implications for LAFCos. Copies of the complete court decisions are available on the CALAFCO website (www.calafco.org) on the Resources page. Click on "court decisions."

statement of reasons for annexation—because the record was replete with references to widespread notice of annexation proceedings and reasons for annexation. The Commission did not violate §57052 and 56707 when it delegated a task to the elections department because department is a government division competent to perform the task. Commission did not err in counting the total number of registered voters at the end of the protest period rather than at commencement of annexation procedures where it had a reasonable explanation for doing so, and the matter was within commission's discretion. The commission properly excluded protests that did not include protesters' residence address under §57051, and trial court's determination that the requirement was inconsistent with the Act because some residents' residential address differed from their mailing address was in error.

See separate detailed article by Michael Colantuono on page 6: "Court Upholds Open Space District Annexation"

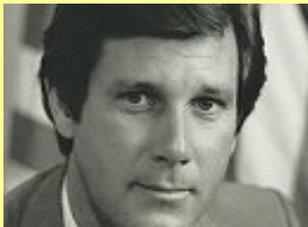
Citizens for Responsible Open Space v. San Mateo County LAFCo (Midpeninsula Regional Open Space District) – filed 31 January 2008, First District, Div. Three. Cite as 2008 SOS 744

Special District Can Not Provide a "New or Different Service" Without LAFCo's Approval (Third District Court of Appeals)

A special district may not provide a "new or different service" without the approval of the county's local agency formation commission. Retail electric service, sought to be provided by an irrigation district that was currently providing wholesale electric service only, was a "new or different service" that could not be provided without LAFCo approval.

South San Joaquin Irrigation District v. Superior Court (San Joaquin Local Agency Formation Commission) - filed April 22, 2008, Third District. Cite as 2008 SOS 2324

LAFCo Champion Dead at 60



MIKE GOTCH
Read more on page 5

COURT OF APPEALS DECISIONS

LAFCo's Approval of Annexation of Territory to Open Space District Upheld Notwithstanding Incomplete Notice of Protest Hearing and Protest Counting Methods (First District Court of Appeals)

This ruling from the First District Court of Appeals stated that where a district annexed property pursuant to Cortese-Knox-Hertzberg, the trial court's decision that San Mateo LAFCo substantially complied with Government Code §57026(e) was not in error—even though commission failed to comply with statute's requirements that public notice of protest hearing set forth a

The Sphere

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

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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
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FROM THE EXECUTIVE DIRECTOR

CALAFCO Legislation Makes Progress

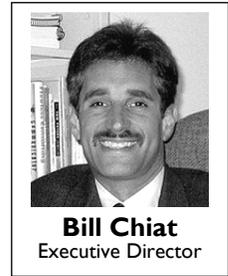
Despite the chaos in the Legislature over the budget, important legislation for LAFCos is making progress in the process. CALAFCO has been successful in advancing a number of bills and in keeping several pieces of legislation off the table. Advocating for LAFCo interests in state legislation is a critical cornerstone of CALAFCO member services.

CALAFCO is sponsoring four bills this year and supporting an additional three. Here is a brief overview of the legislation and its current status. Specific language and greater detail is available at: www.calafco.org.

Financial Disclosure to LAFCo – AB 1998 (Silva)

This *CALAFCO-sponsored* bill follows up on our success last year with AB 745 (Silva) which was signed into law in 2007 and requires that contributions and expenditures for political purposes on proposals before LAFCo be reported subject to the same requirements that the Political Reform Act provides for local initiative measures. The bill also clarified current law that allows a LAFCo to adopt local disclosure policies and procedures that are more stringent than the statewide requirements for petitions.

SB 1998 will add responsibility for financial disclosure requirements to the Political Reform Act of 1974 and move responsibility to administer the law from LAFCo to the Fair Political Practices Commission. Because this bill changes the Political Reform Act, it requires a 2/3 approval in both houses. The bill passed the Assembly unanimously on the consent calendar. It has been assigned to the Senate Elections, Reapportionment & Constitutional Amendments Committee. As of print date a committee hearing had not been scheduled.



Bill Chiat
Executive Director

Special District Latent

Power Process – AB 2484 (Caballero with Hollingsworth and Kehoe)

This *CALAFCO-sponsored* bill clarifies both the procedures, and that only the affected special district may initiate, by resolution, a proposal to increase, modify, decrease or divest itself of specified services or functions within its district service area. The bill defines such a proposal as a “change of organization” and requires LAFCo to ensure that proposed actions have a plan for how the affected services or functions will be funded in order to prevent the authorization of unfunded or under funded services. It also provides clear protest provisions to ensure that affected landowners and/or voters may participate in the process. AB 2484 has passed the Assembly and is scheduled for a hearing at the Senate Local Government Committee on 4 June.

Cortese-Knox-Hertzberg Omnibus Bill – AB 3047

This bill is authored by the Assembly Local Government Committee and *sponsored by CALAFCO*. It is the Association’s annual bill which makes non-substantive, technical changes to CKH. Typically these are cross reference errors, incorrect terms, and inconsistencies in the law. This year the bill contains five changes that range from clarification on number of days, to the elimination of requirements that resulted in duplicate mailings to voters and landowners. AB 3047 passed the Assembly and is scheduled for hearing at Senate Local Government Committee on 4 June.

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FROM THE BOARD CHAIR

CALAFCO's Focus on Member Services

By Peter Herzog, CALAFCO Board Chair

One of the priorities of CALAFCO has been to provide educational forums and professional development opportunities for commissioners, LAFCo staff, associate members and stakeholders. In 2007, the CALAFCO Board revisited its strategic plan and emphasized its continuing commitment to enhancing member services. One of the more popular member services has been our CALAFCO University classes.

By the time this issue of "The Sphere" reaches you, the latest class – *Delta Decisions and Drought: The Future of Water Supply in California* – will be over. When I wrote this article, the class was full and had a waiting list of people wanting to attend. The topic of the class – the various forces that could significantly affect the water supply throughout California – is timely and important given the State's deficit, recent court decisions, and the long, hot summer ahead. If you weren't able to attend *Delta Decisions and Drought*, don't worry. Course manuals and materials are now available on the CALAFCO Members' Only web page.

There are two more equally important CALAFCO University classes scheduled: "*Agriculture and Open Space Mitigation Policy, Practices and Definitions*" (Friday, July 11th in Sacramento) and "*Assessing Wastewater Infrastructure and Capacities*" (Friday, October 24th in Los Angeles). Agendas and registration for all CALAFCO University classes are posted on the CALAFCO website (www.calafco.org). If you want more information, want to volunteer as a "professor" or want to suggest future courses,

please contact CALAFCO Deputy Executive Officer **Don Lockhart** (Sacramento LAFCo). And thanks to Don for stepping up to organize these classes.



PETER HERZOG
CALAFCO Board Chair

The CALAFCO University courses in 2008 are the latest in a series of classes suggested by LAFCos and designed to enhance our member services. Topics of past courses have included incorporations, homeowners associations and public agencies, CEQA for LAFCos and water availability analysis for LAFCos. As with the most recent course, manuals and materials from past classes are available on the CALAFCO Members' Only web page. Finally a special thanks to **Santa Clara LAFCo** and all the program participants for a very successful and well-received Staff Workshop. The bar keeps getting raised!

As always, I welcome your ideas, thoughts and comments regarding CALAFCO. We are here to serve and make this organization a valuable resource for you. Let me know how we're doing!



BOARD OF DIRECTORS

2008 CALAFCO ACHIEVEMENT AWARDS

The CALAFCO Achievement Awards provide statewide recognition to individuals, agencies, and organizations that model and contribute to the ideals of LAFCo.

The 2008 Awards are now open for nominations. Categories include:

- ◆ Outstanding CALAFCO Member
- ◆ Distinguished Service Award
- ◆ Most Effective Commission
- ◆ Outstanding Commissioner
- ◆ Outstanding LAFCo Professional
- ◆ Outstanding LAFCo Clerk
- ◆ Project of the Year
- ◆ Government Leadership Award
- ◆ Legislator of the Year

Deadline for nominations is **Friday, 15 August 2008**. Awards must be received at Santa Cruz LAFCo by the deadline to qualify.

Awards will be presented at the beautiful black tie optional Awards Gala during the annual conference at Universal City on Thursday, 4 September 2008.

Awards information and nomination forms are available on the CALAFCO website (www.calafco.org).

NOMINATIONS OPEN FOR BOARD OF DIRECTORS

CALAFCO Board members serve two-year terms. Members must be a commissioner (regular or alternate) of a member LAFCo. Candidates are nominated by their LAFCo.

For 2008 there are nine seats open for election:

- ◆ Three county members*
- ◆ Two city members
- ◆ Two special district members
- ◆ Two public members

*At least one seat is expected to be an open seat

Nomination packets and complete details are available on the CALAFCO website (www.calafco.org).

Nominations must be received at the CALAFCO office by **Friday, 8 August 2008** to be eligible. Elections are held at the annual Business Meeting on Thursday, 4 September 2008.

TRACKS Around the State



VENTURA

Ventura
LAFCo has
hired **Kai
Luoma** to
serve as
the new

Analyst. Prior to joining LAFCo, Kai worked as a Senior Planner for the City of Santa Clarita. He was responsible for reviewing development projects in the unincorporated areas surrounding the City and coordinated the City's annexation applications with the Los Angeles LAFCo. In addition, he worked on a large regional planning project that encompassed the entire Santa Clarita Valley.

Kai earned his Bachelors degree in geography from California State University, Fresno, and is currently working toward his Masters degree in public administration from California State University, Dominguez Hills. Geographically speaking, Kai has come full circle: he was born in the City of Ventura and lived here for 13 years until his family relocated to Northern California. His fellow staff and the Commission are pleased to reap the benefits of his return "home!"

Submitted by Kim Uhlich, Executive Officer

GOLD ASSOCIATE URS

URS welcomes the Municipal Business Group (MBG) to its Santa Ana office in southern California. MBG, an experienced team of professionals specializing in a wide-range of management consulting services, assists municipal agencies seeking to improve business and management performance. MBG can help prepare for the Municipal Service Reviews (MSR), as well as provide leadership and program structure for implementing recommendations following these reviews.

For more information, contact Joe Tait at 714-973-4027 or joe_tait@urscorp.com.

VISIT www.CALAFCO.org

Electronic versions of many resources and publications are available on the CALAFCO website. Updated regularly.

HUMBOLDT

LAFCo Mourns Loss of Commission Chair and Humboldt County Supervisor

Roger Rodoni: Aug. 13, 1940 to April 24, 2008

Roger Rodoni, a three term Humboldt County Supervisor, was elected as Humboldt LAFCo Chairman in 2008. He had served on the Commission for several years prior to election as Chairman and had a strong interest in, and positive perspective on, LAFCo matters. Roger was campaigning for a fourth term on the Board of Supervisors. He was a member of Fortuna Sunrise Rotary, Humboldt-Del Norte Cattlemen's Association, California Cattlemen's Association, The Buckeye Conservancy, Farm Bureau, Grange, Fortuna Chamber of Commerce and Native Sons of the Golden West.



Humboldt Supervisor
and LAFCo Chair
Roger Rodoni

Roger Rodoni was many things to many people: teacher, philosopher, confidant, loving husband, true friend, father, grandfather and a man who loved his dogs.

Roger was born in Scotia, California to Jim and Eva Rodoni and, other than his years at Cal Poly, San Luis

Obispo, spent his entire life in Humboldt County. Proud of his long generational ties, he was a Humboldt County historian and a third-generation Native Son with an extensive collection of local historical documents and photographs. Roger loved Humboldt County.

Submitted by George Williamson, Executive Officer

QUOTES ON LIFE

"I get up every morning determined to both change the world and to have one hell of a good time. Sometimes, this makes planning the day difficult."

~ E. B. White (1899-1985)
American writer

MIKE GOTCH

Former LAFCo Executive Officer, Assembly Member and CALAFCO Executive Director Dies at 60

On May 18, 2008, Former San Diego LAFCo Executive Officer, San Diego City Councilman, and State Assemblyman **Mike Gotch**, died at Scripps Memorial Hospital in San Diego. His wife, Janet, said he had been battling stage 4 melanoma for about a year. Mike Gotch had a deep appreciation and love for LAFCo, politics, and local government.

Mike Gotch began a career in government as an intern with the Chief Administrative Office and the Department of Public Works in San Diego County in 1973. At the age of 27 in June 1974, Mike was appointed as a staff analyst to the San Diego LAFCo. He was appointed as Assistant Executive Officer in 1975 and was selected by the Commission to be its Executive Officer in 1976. Mike served in that capacity until his election to the San Diego City Council in 1979. In 1981, special legislation was enacted requiring that the City of San Diego obtain a permanent seat on the San Diego LAFCo. Curiously, then-Councilman Mike Gotch was not a supporter of the special legislation, but became the first City of San Diego representative on the San Diego LAFCo. While a member of the San Diego LAFCo, he was also elected to the CALAFCO Executive Board. After serving eight years on the City Council and several terms as Deputy Mayor, he decided not to run for another term at city hall. In 1987, he left politics, resigned his city member position on LAFCo, and re-entered the private sector as Vice President of Torrey Enterprises, Inc. In 1988, Mike Gotch re-emerged as the Alternate Public Member of the San Diego LAFCo.

In 1990, Mike once again left the San Diego LAFCo in his quest to be elected to the State Assembly. Mike Gotch was elected to the State Assembly in 1990 and represented San Diego from 1990 to 1994. He served as chair of the Local Government Committee and vice-chair of the Natural Resources Committee. During his time as an Assembly member, Gotch also served as a member of committees on Consumer Protection, Health, Ways and Means, and Public Safety. He had also served on several boards and commissions including the California Coastal Commission from 1980-1988, the San Diego Stadium Board of Governors from 1988-1990. While serving as Chairman of the Assembly Local Government Committee, Mike Gotch authored a number of bills, most notably AB 1335, often referred to as the



Mike Gotch

“Gotch Bill.” The Gotch Bill provided LAFCos with the power to initiate certain types of jurisdictional changes and empowered commissions to review the extension of new or different services outside jurisdictional boundaries.

After leaving the Assembly in 1994, Mike Gotch moved full time to Napa County and served on the Napa LAFCo as an Alternate Public Member. He also was elected to CALAFCO for a second tour of duty. In 1998, he decided to resign from the CALAFCO Executive Board to become its first paid Executive Director. Mike was instrumental in the re-engineering of CALAFCO during a turbulent time for the Association.

In 1999, Mike Gotch resigned from CALAFCO and became the Legislative Secretary for Governor Davis. He served until 2003 and was responsible for directing the Governor’s legislative program through the Senate and Assembly. After re-entering public life again, Mike split his time between his property in Napa County and his desert home in the Borrego Valley (San Diego County). Mike served as a Board member of the Borrego Springs Chamber of Commerce and the Anza Borrego Foundation and Institute. He was also a founding member of the Borrego Village Association.

Several months ago I informed one of Mike’s former San Diego LAFCo coworkers – Peter Detwiler, Senate Local Government Committee – about his battle with cancer. Peter sent him some encouraging words and commented to me that he was thinking why he had not heard from his dear friend (Mike Gotch) on the night of May 18th. After Mike passed away on May 18th, Peter commented to me that he was glad to have one last chance to reach out to Mike. Those whose lives have been changed as a result of knowing Mike Gotch will miss him beyond imagination, but we can all take comfort in knowing that his contributions will be ever lasting not only in the statutes of the State of California, but in the hearts and minds of those he touched.

Submitted by: Mike Ott, Executive Officer, San Diego LAFCo

1st District Court of Appeals

COURT UPHOLDS OPEN SPACE DISTRICT ANNEXATION

By Michael G. Colantuono

Citizens for Responsible Open Space v. San Mateo County LAFCo (Midpeninsula Regional Open Space District), 2008 WL 249775 (1st District Court of Appeal, January 31, 2008) is a recent appellate decision upholding the disputed annexation of coastal San Mateo County to the Midpeninsula Regional Open Space District (MPROSD). The case is good news for Local Agency Formation Commissions (LAFCOs) because it indicates courts review annexation challenges practically, looking for serious errors which prejudice the rights of a challenger and not for technical perfection. The case will be helpful to other legislative decision makers, too, by requiring judicial deference to the actions of the elected branches of government.

Under the Cortese-Knox-Hertzberg Local Government Reorganization Act under which LAFCOs operate, an annexation is approved in two steps: first, LAFCo makes a discretionary, legislative decision whether to approve the annexation and on what conditions and then LAFCo gives notice of the proposed annexation to the registered voters of the affected territory or, if there are fewer than 12 voters, to the property owners of record. If more than half of the voters or property owners protest the annexation, it is defeated. If fewer than a quarter protest, it can be approved without an election. If between a quarter and a half of the voters or property owners protest, then an election is required. In this case, just over 23% of the annexation area's registered voters filed valid protests and LAFCo therefore approved it without an election. A grass-roots group filed suit.

The appellate court first found that the exclusion of a statement of reasons from the notice of the opportunity to protest the annexation did not prejudice anyone's rights both because it was plain that there was ample public discussion of the annexation and the reasons for it and because the notice mentioned the LAFCo resolution tentatively approving the annexation, which did include a statement of reasons. The court also concluded that alleged ambiguities in the map of the annexation area on the notice were not sufficient to confuse the electorate as to what land was involved. Also rejected was the challengers' claim that the LAFCo could not delegate to the County Elections Division responsibility to compare protest signatures with the voter roll. So long as LAFCo reviews the Elections Division's conclusions before adopting them, it fulfilled its obligation under the statute.

Another issue was the date on which the number of registered voters in the annexation area is determined to measure the number of protests required to defeat a proposal or to require an election. The challengers argued total voters should be determined when LAFCo accepts an annexation proposal for filing; San Mateo LAFCo had used the date of the protest hearing, reasoning that voters who registered after the application was filed could protest and thus should be included in the electorate against which the size of the protest is measured. The Court of Appeal found that LAFCo had not abused its discretion in deciding to use this later date. Although, technically, LAFCOs remain free to determine on what date to measure the size of the electorate for protest purposes, the safest course will be to follow the lead of this case and to use the number registered on the protest hearing date.

Finally, the court concluded LAFCo had properly disqualified protests which listed a post office box rather than a residence address, concluding that the Cortese-Knox-Hertzberg Act, like the Elections Code, requires signatures to be accompanied by a residence address. This issue arose because the challengers circulated protest forms with only one line for the protestor's address, unlike LAFCo's protest form, which provided lines for both mailing and residence addresses, as do most elections forms.

Generally speaking, these lessons can be drawn from this case: Courts will not reverse LAFCo decisions unless a challenger proves an error occurred which "diversely and substantially affects the rights of any person" or that the decision was "not supported by substantial evidence in light of the whole record."



Courts do not look for technical perfection but for meaningful compliance with the requirements of the statute so that affected voters and property owners have a practical opportunity to be heard. Courts also defer to reasonable judgments by public agencies in construing ambiguous provisions of the statutes those agencies are charged to implement and allow agencies to delegate their responsibilities to other public agencies – like the County Elections Division – which have the expertise to assist them.

This is good news for public agencies of all kinds and should deter legal challenges which turn on picayune errors in complex agency actions.

Michael G. Colantuono and Holly O. Whatley of Colantuono & Levin, P.C. were retained by the Midpeninsula Regional Open Space District to draft an *amicus curiae* ("friend of the court") brief for use by CALAFCO and the California Special Districts Association (CSDA) in this case.

From the Cover

Courts Weigh in on LAFCo

Deliberative Process Privilege Prohibits Taking Depositions of LAFCo Commissioners (Third District Court of Appeals)

A disappointed applicant to a local agency formation commission may not take the depositions of the commissioners to learn what, if any, extra-record information the commissioners had when they denied the application because extra-record evidence is not admissible in an action or proceeding challenging a quasi-legislative administrative decision and because taking the commissioners' depositions would violate the deliberative process privilege.

San Joaquin Local Agency Formation Commission v. Superior Court (South San Joaquin Irrigation District) - filed April 22, 2008, Third District. Cite as **2008 SOS 2328**.

SUPERIOR COURT DECISIONS

No Incompatibility of Office Exists with a County Planning Director Also Serving as LAFCo Executive Officer (Sierra Superior Court)

The Court found there was no "conflict of interest" created in this case by virtue of the County Planning Director also serving as the Executive Officer of LAFCo. The Court pointed to Government Code §56380 and 56384 which specifically allow LAFCos to contract with public agencies for personnel. Therefore, the same person holding the position of Planning Director for the County and Executive Officer of LAFCo does not create "incompatible offices" for purposes of the actions taken in this case.

Sierra Valley Development Company, LLC and John K. Gullixson v. Board of Supervisors of Sierra County and Sierra County. Sierra County Superior Court Case Number 6728, filed 18 April 2008.

Independent Contractor May Serve as LAFCo Executive Officer (Yuba Superior Court)

In a question on whether a closed-door session could be held to conduct the evaluation on an independent contractor who had been appointed as the LAFCo executive officer, the Court ruled that the independent contractor can function as an officer of a LAFCo. The ruling stated that while there was incongruity in law and documents provided, "...that incongruity must be harmonized by giving controlling influence to the legislative provisions notwithstanding seemingly inconsistent provisions of the agreement. From that standpoint, the critical factual issue becomes whether (the independent contractor) was functioning as the LAFCo executive officer, notwithstanding the provisions of the agreement. The evidence provided at the trial (including minutes of LAFCo meetings) and the foregoing considerations, lead to the conclusion that he was and that, therefore, the evaluation of his performance was properly conducted in closed session."

Hoffman Ranch v. Local Agency Formation Commission of Yuba County. Yuba County Superior Court Case Number CVPT 06-0000487, filed 3 December 2007.

An Incorporation Application is Not a Project Under CEQA and an EIR Is Not Required (Monterey Superior Court)

Proponents for the incorporation of Carmel Valley filed a petition for incorporation. The LAFCo of Monterey County determined that the application was a project under CEQA and required an Environmental Impact Report. In a suit filed by the proponents, the court ruled that "LAFCo abused its discretion when it decided that incorporation of the Town of Carmel Valley was (1) a project and (2) that an EIR was required. There is no substantial

evidence in the whole record of any potential effect on the physical environment."

Carmel Valley Forum, Inc. v. Local Agency Formation Commission of Monterey County. Monterey County Superior Court Case Number M83394, filed 2 May 2008.



LAFCo's Determination to Process a Consolidation of a Municipal Water District and a Water Conservation District under C-K-H Act Provisions Upheld (Ventura Superior Court)

The Trial Court ruled that LAFCo has authority to consolidate a water conservation district with another water district because the "principal act," the Water Code, incorporated by reference the consolidation procedures set forth in statutes that the Legislature has reenacted. There is no "statutory gap" that prevents the completion of the consolidation because the provisions pertaining to County Water Districts, referred to in Water Code Section 76020, still apply. The notion of a "statutory gap" that would leave LAFCo with no procedure to complete a consolidation of districts is inconsistent with the Legislature's express statement of its intent.

San Bernardino Valley Water Conservation District v. Local Agency Formation Commission of the County of San Bernardino. Ventura County Superior Court Case Number 56-2007-00305563, filed 8 May 2008.

Copies of court decisions are available at www.calafco.org on the resources page. Please notify CALAFCO of any Superior Court decisions which may have a bearing on LAFCo.

From Page 2

Executive Director Reports on Legislation

Cortese-Knox-Hertzberg Changes – AB 1263 (Caballero)

This *CALAFCO-sponsored* bill makes several changes to CKH that did not qualify for the Omnibus Bill (AB 3047). There are four components to the bill: 1) removes private railroad companies from the definition of landowner, 2) clarifies that LAFCo can charge the full cost of processing to applicants on a schedule of fees and as service charges to a deposit; 3) allows LAFCos to process new islands created as a result of a county boundary change after 2000 under the islands annexation provision; and 4) a non-substantive clean up of LAFCo powers language in §56375.

This bill was a ‘gut and amend’ of a previous LAFCo bill from last year. It already passed the Assembly and is scheduled to be heard by Senate Local Government Committee on 4 June.

VLF Subventions for Incorporations and Annexations – SB 301 (Romero)

This *CALAFCO-supported* bill initially extended the sunset on VLF subventions for new incorporations and inhabited annexations from 2009 to 2014. Subsequent amendments have eliminated the sunsets for both incorporations and annexations and will make the subventions permanent. The bill passed the Senate and is scheduled at Assembly Local Government Committee on 4 June.

County Service Area Law Rewrite – SB 1458

Authored by the Senate Local Government Committee, this bill is a rewrite of the 1950s era CSA law. Among other things,

this bill brings CSA formation and activation of CSA latent powers into compliance with CKH and makes it clear that CSAs are subject to LAFCo law. It also requires LAFCo and the county to establish a list of existing powers for every CSA by 1 January 2009. This will ensure that an accurate accounting of all CSAs and their powers exists in California. CALAFCO was a participant in the working group that crafted the rewrite and supports this bill. SB 1458 has passed out of the Senate and is scheduled at the Assembly Local Government Committee on 4 June.

CSD Broadband Powers – SB 1191 (Alquist)

This bill adds broadband equipment and transmission to the list of Community Service District powers. This power was originally contemplated during the CSD rewrite two years ago but removed because of objections from SBC. The addition of broadband powers in CSDs was one of the recommendations of a Governor’s Task Force on Connectivity chaired by AT&T. CALAFCO supports this bill. It has passed the Senate and is scheduled for 4 June at Assembly Local Government Committee.

Those That Didn’t Make It

CALAFCO has also been working to ensure that legislation which ran counter to our legislative policies were not introduced or died in committee. In several cases CALAFCO helped find alternate solutions that did not require legislation. Among the bills that CALAFCO opposed or found alternate solutions were **AB 2278** which would have granted fire protection districts the power to negotiate their own property tax exchange agreements; **AB 2564** which would have circumvented the LAFCo process for the formation of certain utility

districts; and **SB 1131** which would have created an expanded commission for Calaveras LAFCo. All three of these bills have died.

Still Out There

One bill critical to LAFCos future remains on the table and the future is uncertain. **SB 375** (Steinberg) addresses greenhouse gas reduction through vehicle trip reductions. The legislation adds requirements to the Regional Transportation Plans (RTP) and ties future transportation funding to compliance with the plan. It creates a required “Sustainable Communities Strategy” (STS) within the RTP. The STS would guide future growth and development within a region, with a goal to maximize infill and minimize growth in agricultural or natural areas. This has the potential to conflict with C-K-H.



Numerous meetings have been held with the various local agency associations, the author’s staff and sponsor representatives (League of Conservation Voters). CALAFCO participated in these. We have been successful in getting agreement to amend the bill to require the STS to consider the LAFCo adopted boundaries and spheres of influence for local agencies, and to consider the Municipal Service Reviews in determining capacities of local agencies to provide services. This will help achieve some consistency between the STS and local LAFCo policies. It does not guarantee, however, that LAFCo policies and the RTP will be consistent. As a result, two different agencies would be considering and adopting growth strategies and/or policies for a region under separate state laws.

This despite the fact that many of the goals of both laws – orderly growth, prevention of sprawl, preservation of agricultural lands and open space – are similar.

The proposed amendments have yet to be put in print as of this writing. There remains a high level of pressure – within the legislature, executive branch, and environmental community – to enact measures now to begin moving the state towards achievement of AB 32 greenhouse gas reduction goals. This is one of the few pieces of legislation that addresses the issue. The CALAFCO Board has a watch position until the requested amendments are added and our peer associations have an opportunity to review the bill.

What Can You Do to Help?

Letters and calls of support from LAFCOs and individual commissioners for CALAFCO sponsored or supported bills are very helpful. Letters of support to the Assembly or Senate Local Government Committee Chairs with copies to the author and your Assembly Member or Senator make a difference!

For AB 1998 (Silva), calls and letters to your Senator encouraging his or her support will be very helpful, since the bill requires a 2/3 majority. Once

KEY ADDRESSEES

The Honorable Gloria Negrete McLeod,
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The Honorable Anna Caballero, Chair
Assembly Local Government Committee
California State Assembly
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The Honorable Arnold Schwarzenegger
Governor of California
State Capitol Building
Sacramento, CA 95814
FAX to 916/445-4633

our bills are passed by the legislature, letters of support to the Governor encouraging him to sign the bills are most helpful.

Changes in legislation directly affect the operations and policy of LAFCO. CALAFCO has put its resources towards ensuring that bills under consideration by the Legislature assist LAFCOs in better achieving their goals of orderly growth, preservation of agricultural and open spaces and efficient delivery of local services. Complete language, support letters, and the current status of bills are available at www.calafco.org.

New Resources Available from the Institute for Local Government

Understanding the Basics of County and City Revenues provides a basic overview of how local agencies are funded and the sources of those revenues.

Climate Change Best Practices Framework offers practical suggestions for local action in ten leadership areas.

Both are available from the Institute for Local Government. ILG is the research affiliate of the League of Cities and CSAC. Publications are available free at: www.ca-ilg.org



The Los Angeles LAFCO is proceeding diligently in putting together a conference that will be **truly educational, sometimes controversial and fun!** A couple of the educational and controversial issues include:

- *"Water – The Good, the Bad and the Ugly"*, a truly realistic look at water availability and water transportation, and
- *"Transportation and Traffic Congestion: Learn from Our Mistakes"* – Los Angeles and other Southern California communities say, we made a mess and here is what you have to look out for as you grow.

However, how about some fun? CALAFCO is throwing the 3rd Annual Wine (who cares about the cheese) and Beer Competition that will really get you started for visiting Universal City and City Walk ... both just a short walk from the hotel. Both have great entertainment and restaurants. We expect that you will be able to relax, or dance the night away.

Mark your calendars for **September 2-5 2008** at the Sheraton Universal in Universal City. Registration, Sponsorship and Lodging information are all available at www.calafco.org. *Looking forward to seeing you!*



“It’s All About the Water!”

By Paul Hood, Executive Officer, San Luis Obispo LAFCo

The SLO Commission first considered the Los Robles Del Mar (LRDM) annexation to the City of Pismo Beach in March 2006. By way of background, the Los Robles del Mar project site involves 182 acres of vacant land located north of Highway 101 and adjacent to the northern boundary of the City of Pismo Beach. The rectangular-shaped property consists of two separately owned parcels referred to as Property A and Property B. Property A involves a total of 154 acres comprising the northern and western portions of the site and would be used for residential development of 312 units. Property B involves a total of 28 acres within the southeastern portion of the site and would be used for development of a private school. The LRDM property has been within the City’s Sphere of Influence since 1987.



The proposed development had been controversial for many years and had endured several lawsuits and two Environmental Impact Reports before the annexation proposal was even submitted to LAFCo by the city. The two previous EIRs and the

development plan had identified State Water as the water supply. However, at one of the last City Council hearings, the City approved a developer’s agreement that required the transfer of the onsite water supply (i.e. wells) to the City, eventually to become part of its municipal water supply. The City was not willing to serve the development from its existing water supply without the onsite wells since that water was committed to future development within the city. The City cited its Urban Water Management Plan and General Plan as support for this position.

The Commission reviewed the annexation proposal and concluded that pumping the onsite wells was not considered in the previous EIRs. The Commission required that a Supplemental EIR (SEIR) be prepared to study the impacts of using the on-site water wells as a municipal supply on neighboring rural residences and another City (Arroyo Grande) that also used the same aquifer. Over the course of the next year and a half, staff worked with a consultant, a hydro-geologist, the property owners, the affected agencies, and the neighboring property owners, to identify the issues, mitigate the impact, if possible, and complete the Draft SEIR. We received over 200 comment letters and responded to each one. The public involvement and outreach effort by LAFCo staff and the consultant was tremendous. Each interested party received a CD with the Public Review Draft of the EIR and a variety of other documentation prior to the LAFCo hearing.

As a result of the analysis contained in the SEIR, it became abundantly clear that the result of pumping the aquifer over a

number of years would likely place the aquifer into overdraft. Certainly there was no guarantee that pumping the wells was a sustainable and reliable water supply for the development project. The situation was made even more tenuous by the fact that the neighboring City of Arroyo Grande also had two wells that were pumping from the same aquifer. Needless to say Arroyo Grande was not willing to commit to reduce or stop pumping if there was an overdraft situation. LAFCo had no conditioning authority over the Arroyo Grande’s actions because the City was not part of the annexation proposal.

As a result, in an effort to mitigate the impact of the City’s pumping from the deep aquifer, the LAFCo staff recommendation was to 1) approve the annexation with the condition that onsite wells not be used by the City as a municipal supply (this would require that the city either use its existing water supply or locate supplemental water), or 2) approve the annexation with a groundwater monitoring program that would prevent the aquifer from going into overdraft (this would require that the city cease using the onsite wells when and if an overdraft occurs and either use its existing water supply or locate supplemental water).

In the end, after a nearly seven hour hearing in January 2008, the Commission decided (6-1) to deny the annexation because the City was not able to document an adequate, reliable, or sustainable water supply for the annexation. The Commission was lauded for having conducted a very accessible public process and for making a well thought out decision based on a very comprehensive information base. Although the City and the property owner did not support the Commission’s decision, they understood that it was based on sound LAFCo principles.

CITY OF FONTANA

City Reorganizes Fire Service at LAFCo

The Mayor and City Council are committed to improving services and infrastructure within the entire Fontana community. Critical to accomplishing this goal is to make sure that money generated in Fontana is reinvested into the community. An important tool to accomplish this objective is through the planned formation of the "Fontana Fire Protection District."

Background

In July 2005, the San Bernardino County Board of Supervisors initiated the reorganization of its fire operations. Following this action, the County filed an application with the San Bernardino Local Agency Formation Commission (LAFCo) to review and consider the reorganization of the San Bernardino County Fire Department. The purpose of the proposed fire reorganization was to achieve the most effective and efficient delivery of services for fire protection, emergency response, paramedic, ambulance and disaster preparedness to residents and landowners.

In response to the County Board's plan to reorganize fire protection services, the Fontana City Council initiated and subsequently filed with San Bernardino LAFCo an alternative proposal for the provision of fire protection. The

City proposed the creation of a subsidiary district and appointment of the City Council as the governing body of the new district. The service boundary includes Fontana's corporate limits and the County areas within the City's Sphere of Influence. It has been a goal of the City to obtain local control



for fire protection and to comprehensively serve the citizens and residents both within the City limits and the City's Sphere of Influence.

Impact to Residents

Residents will see no increase in their property taxes. The utility users' tax on residential property was eliminated in June 2004. The utility users' tax on commercial property will end in June 2009. One of the benefits of forming the Fontana Fire Protection District (FFPD) is that property tax revenues will remain local, instead of being diverted to other areas of the county. The City will be able to use that revenue to make needed improvements to fire stations and equipment. Residents of property recently annexed to the City will see no increase in their property tax rate.

In addition, as part of the formation of the Fontana FPD, the relocation of County Fire plan check and inspection staff to the City's Development

Services Organization will occur almost simultaneously. The plan check and inspection staff will be housed at City Hall. The additional staff will assist in streamlining the City's plan check and inspection process by creating a "one-stop shop."

The City of Fontana is a CALAFCO Associate Member.



UPCOMING COURSES

Mark your calendar!

◆ Agriculture and Open Space Mitigation Policy, Practices and Definitions

An in-depth examination of LAFCOs' role, responsibility and authority in agriculture and open space mitigation. **Friday, 11 July 2008** in Sacramento.

◆ Assessing Wastewater Infrastructure and Capacities

This practical course will help staff and commissioners understand the basics of wastewater infrastructure and systems and how to evaluate the existing and future capacity of systems. **Friday, 24 October 2008** in Los Angeles.

Watch for detailed course information and registration materials on www.calafco.org.

Miss a class? Looking for the materials? Check out the Members' Library at www.calafco.org/members.

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Thank you for your support!

The Sphere

CALAFCO Journal

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Sharing Information and Resources

2008 CALAFCO Staff Workshop Examines Emerging Trends

A record 129 LAFCo staff, attorneys and others interested in LAFCo attended the Staff Workshop in San Jose on April 2-4. Workshop hosts—**Santa Clara LAFCo**—coordinated an exceptional program of presentations and discussions. Sessions ranged from case studies in innovations and LAFCo as a lead agency, to improving the application process, records management and climate change. Highlights included the professional development session on interpersonal communications, and the keynote address from Don Weden, retired Principle Planner of Santa Clara County.

Thank You to all who participated and to the many volunteers who contributed their time and expertise to participate on a panel or serve as a speaker. Special thanks to Workshop sponsors **Dudek** and **Michael Brandman Associates**.



Roundtable discussions for Executive Officers (left), Clerks (right), and LAFCo Counsel allowed staff to share ideas and experience with each other



Participants engaged in a wide variety of presentations and discussions at workshop



Keynote Speaker Don Weden examines "winds of change" for LAFCo



Stephen Jenkins discusses AB 32 greenhouse gas reduction requirements and LAFCo



Copies of Workshop presentations are available on the CALAFCO website www.calafco.org