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Sent: Sunday, February 12, 2012 9:22 AM
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Subject: Legislative Update from Board Meeting
Attachments: CALAFCO Proposal - Expansion of Out of Agency Authority.pdf; EDC Letter - 8 February 2012.pdf

LAFCO
San Bernardino County

Dear Legislative Committee Members: The CALAFCO Board of Directors met in Irvine on Friday and considered several legislative items which the Committee sent to the Board for consideration:

1. **Legislative Policies:** The Board adopted the Committee-recommended policies along with the request from Monterey LAFCo to add a policy regarding support of the Williamson Act. The new sections are 3.5 (Williamson Act) and 5.5 (shared services). The policies are available on the web site at: [CALAFCO 2012 Legislative Policies](#).
2. **56133 Service Extensions:** The Board discussed this proposal and evaluated feedback received from LAFCos to date (one oppose, one 'not support', and five support). The Board also received a letter from the Environmental Defense Center requesting additional stakeholder input before proceeding. The Board felt it was important to have involvement of the environmental and agricultural communities before seeking legislation. They voted to adopt a position similar to the Committee recommendation: support the service extension language in 2012 if sponsored by others, otherwise begin a conversation with the environmental and agricultural communities this summer with the goal of introducing language for the 2013-14 session. The Board had several suggestions to strengthen the description of the proposal (not the proposed language). Attached please find an updated description of our proposal, along with the letter received from the EDC.
3. **LAFCo Name Change:** The Board voted unanimously not to proceed with pursuing a name change for LAFCo. They felt there was not sufficient justification to proceed nor the CALAFCO resources that would be required for the effort.

Please let me know if you have any questions. The next meeting of the Committee is Friday, March 16th in Oakland. Cheers! BC

Bill Chiat
Executive Director

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2012 CALAFCO PROPOSAL

Expand LAFCo Authority to Allow Out-of-Agency Services

The Problem

Local Agency Formation Commissions continue to find local circumstances when it would make sense to extend municipal services (primarily water, recycled water, wastewater, and energy) outside the boundaries or spheres of local agencies. Unless there is a health and safety emergency, LAFCo is prevented from allowing the service extension, even when it makes sense economically and/or efficiently. Providing LAFCo with expanded authority to allow service extensions in very specific circumstances would measurably strengthen a LAFCo's ability to effectively regulate services in concert with its evolving role in regional growth management. Specifically, the changes will provide LAFCo more focus in accommodating service extensions lying beyond spheres of influence that are otherwise sensible, given local conditions, while clarifying the determination of when the statute and its exemptions apply rests solely with LAFCo. The changes would also strike unnecessary references to "contract or agreement approval" given these documents are generally prepared only after the proposed service extensions have been approved by LAFCo.

The proposal limits this proposed authority in order to reinforce LAFCos mandate to prevent sprawl and protect agricultural and open space lands.

The Proposal: Three Changes

CALAFCO is considering legislation to amend Government Code §56133 and its provisions governing LAFCo approval for cities and districts to provide new and extended services outside boundaries. Three key changes underlie this proposal. The **first** and most significant change expands LAFCo's existing authority to approve new and extended services beyond agencies' spheres of influence inclusive of public health and safety threats, so long as LAFCo can make three findings at noticed public hearings. These findings involve determining the extension: 1) was considered in a municipal service review; 2) will not result in adverse impacts on open-space and agricultural lands or growth; and 3) a later change of organization is not expected or desired based on local policies. The **second** change clarifies LAFCo's sole authority in determining the application of the statute. The **third** change deemphasizes the approval of contracts and emphasizes the approval of service extensions.

Examples

Some examples showing how these changes could be implemented:

- ♦ LAFCo would have the authority, subject to making specific findings, to approve new or extended outside services beyond spheres of influence for public facilities, such as fire stations and schools, where the connection to the affected agency's infrastructure is a potential option.
- ♦ LAFCo would have the authority, subject to making specific findings, to approve new or extended outside services beyond spheres of influence for private uses supporting permitted intensity increases, such as residential construction or commercial additions.
- ♦ LAFCo would avoid delays and other transaction costs tied to disagreements with agencies regarding the constitution of "new" and "extended" services as well as determining when exemptions apply. Notably, this includes determining when a contract service proposed between two public agencies qualifies for exemption if it is "consistent with the level of service authorized by the existing provider."

- ♦ LAFCo would have the authority, subject to making specific findings, to approve new or extended outside services beyond boundaries and spheres of influence to provide water, wastewater and fire protection services to disadvantaged unincorporated communities where it has been determined the community will not annex into the affected city or district.

FAQs

Does providing LAFCo with more flexibility to approve services beyond spheres of influence undermine LAFCo's ability to curb sprawl?

No. The proposed changes include measured safeguards to protect against inappropriate urban development by requiring LAFCo to make three specific findings (consistency with a municipal service review, no adverse agricultural or growth inducing impacts, and no expectation of future annexation) at noticed hearings before approving new or extended services beyond spheres.

Will these changes create new pressures on LAFCo to accommodate development beyond agencies' spheres they would otherwise reject?

The proposed changes do not affect LAFCo's existing right and duty to deny outside service requests deemed illogical and inconsistent with their policies.

CALAFCO Proposed Amendments to G.C. Section 56133

12 December 2011

(a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional ~~boundaries~~ boundary only if it first requests and receives written approval from the commission ~~in the affected county~~. The commission may delegate approval of requests made pursuant to subdivisions (b) and (c)(1) below to the Executive Officer.

(b) The commission may authorize a city or district to provide new or extended services outside its jurisdictional ~~boundaries~~ boundary but within its sphere of influence in anticipation of a later change of organization.

(c) ~~If consistent with adopted commission policy,~~ The commission may authorize a city or district to provide new or extended services outside its jurisdictional ~~boundaries~~ boundary and outside its sphere of influence under any of the following circumstances:

(1) To respond to an existing or impending threat to the public health or safety of the residents of the affected territory if both of the following requirements are met:

(1) ~~(A)~~ The entity applying for the contract approval has provided the commission with documentation of a threat to the health and safety of the public or the affected residents.

(2) ~~(B)~~ The commission has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, or sewer system corporation as defined in Section 230.6 of the Public Utilities Code, that has filed a map and a statement of its service capabilities with the commission.

(2) To support existing or planned uses involving public or private properties, subject to approval at a noticed public hearing that includes all of the following determinations:

(A) The extension of service or service deficiency was identified and evaluated in a municipal service review prepared by the commission pursuant to section 56430.

(B) The effect of the extension of service would not result in adverse impacts on open space or agricultural lands or result in adverse growth inducing impacts.

(C) A later change or organization involving the subject property and the affected agency is not feasible or desirable based on the adopted policies of the commission.

(d) The executive officer, within 30 days of receipt of a request for approval by a city or district ~~of a contract~~ to extend services outside its jurisdictional boundary, shall determine whether the request is complete and acceptable for filing or whether the request is incomplete. If a request is determined not to be complete, the executive officer shall immediately transmit that determination to the requester, specifying those parts of the request that are incomplete and the manner in which they can be made complete. When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete, unless the commission has delegated approval of ~~these requests~~ made under this section to the executive officer. The commission or executive officer shall approve, disapprove, or approve with conditions the ~~contract for~~ extended services. ~~If the contract is~~ the extended services are disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.

(e) This section does not apply to ~~contracts or agreements solely involving~~ two or more public agencies where the commission determines the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider.

(f) This section does not apply to ~~contracts for~~ the transfer of nonpotable or nontreated water.

(g) This section does not apply to ~~contracts or agreements solely involving~~ the provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries. However, prior to extending surplus water service to any project that will support or induce development, the city or district shall first request and receive written approval from the commission in the affected county.

(h) This section does not apply to an extended service that a city or district was providing on or before January 1, 2001.

(i) This section does not apply to a local publicly owned electric utility, as defined by Section 9604 of the Public Utilities Code, providing electric services that do not involve the acquisition, construction, or installation of electric distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundaries.

(j) The application of this section rests solely within the jurisdiction of the commission in the county in which the extension of the service is proposed.



February 8, 2012

CALAFCO Board, c/o
Mr. William Chiat, Executive Director, CALAFCO
California Association of Local Agency Formation Commissions
1215 K Street, Suite 1650
Sacramento, CA 95814

Re: Agenda Item 6(c), Proposed Revisions to LAFCo Law – Out of Agency Services
(Government Code §56133)

Dear Mr. Chiat:

This letter summarizes the Environmental Defense Center's (EDC) comments regarding the CALAFCO Legislative Committee and Board of Directors' potential support of legislation to expand LAFCo authority to extend services outside boundaries and spheres for reasons other than health and safety. EDC protects and enhances the environment through education, advocacy and legal action. Our service areas include Santa Barbara, Ventura, and San Luis Obispo. EDC is concerned about the proposal for numerous reasons, including its land use implications and the lack of stakeholder outreach in developing the proposal, as described in detail below.

1. Potential Land Use Issues.

CALAFCO is considering legislation to amend Government Code §56133 and its provisions governing LAFCo approval for cities and districts to provide new and extended services outside boundaries. As noted in the February 8th Staff report to the Board, three key changes underlie this proposal as follows:

1. Expand LAFCo's existing authority to approve new and extended services beyond an agency's sphere of influence if consistent with adopted LAFCo policy, to "support existing or planned uses involving public or private properties." No requirement for a threat to health or safety is required.

Approval must be given at a noticed public hearing and must include the following determinations:

- a. The extension of service(s) or service deficiency was identified and evaluated in a Municipal Service Review prepared by the Commission;

- b. The effect of the extension of service(s) “would not result in adverse impacts on open space or agricultural lands or result in adverse growth inducing impacts”; and
 - c. A later change of organization is not feasible or desirable based on the adopted policies of the Commission.
2. Give sole discretion and application of the section to the LAFCo in the county in which the extension of service is proposed.
 3. Focus on the approval of extension of service(s) instead of contracts/agreements involving the public agency which would be providing the service(s) and the recipient of the service.

The extension of services has always been an important measure and physical manifestation of how, when and where cities can grow. Given LAFCo’s mandate to provide for orderly growth and development, preserve agricultural lands, discourage urban sprawl, and assure efficient local government services, it is unclear how the expansion of individual authority to extend urban services outside of health and safety reasons would be in alignment with these priorities. The inclusion of item (b) above is helpful, but additional findings should be added. This proposal has serious implications for the potential conversion of agricultural land throughout the state. Once urban services are extended, growth generally follows.

A good example of this is currently occurring in the unincorporated area of Lompoc, adjacent to the City of Lompoc boundary, for Bailey Avenue. This area, consisting of 270 acres of prime agricultural land in active production, contains a sewer line extension that was completed (and grandfathered in) prior to the health and safety requirements for services extensions in Government Code §56133. This sewer extension is now being used to argue for the City’s expansion into this area, which would convert this highly productive farmland. While there may be a means to include provisions in the proposal to address these types of concerns for extensions of services outside of approved SOIs, the current findings are inadequate and could be too broadly interpreted. *Only with broad stakeholder input and refinement of the proposal can these types of concerns be addressed, if at all.*

Providing LAFCo with expanded authority to allow service extensions in very specific circumstances would measurably strengthen a LAFCo’s ability to authorize growth outside of existing and approved SOIs. This is a major concern, particularly given the inconsistent manner in which various LAFCOs operate and interpret policies applicable to them. Since the changes will provide LAFCo more flexibility and authority in allowing service extensions lying beyond existing spheres of influence, potential land use implications must be considered and addressed. Of particular concern are the following examples of expanded authority that LAFCOs would obtain with the proposal as noted in the February 10th staff report:

- LAFCo would have the authority, subject to making certain findings, to approve new or extended outside services beyond spheres of influence *for private uses supporting permitted intensity increases, such as residential construction or commercial additions (emphasis added)*.
- LAFCo would avoid delays and other transaction costs tied to disagreements with agencies regarding the constitution of “new” and “extended” services as well as determining when exemptions apply. Notably, this includes determining when a contract service proposed between two public agencies qualifies for exemption if it is “consistent with the level of service contemplated by the existing provider.”
- LAFCo would have the authority, subject to making certain findings, to approve new or extended outside services beyond boundaries and spheres of influence to provide water, wastewater and fire protection services to disadvantaged unincorporated communities where it has been determined the community will not annex into the affected city or district.

The proposed revisions purport to establish LAFCo as the sole authority in determining the application of the statute and deemphasize the approval of contracts or agreements in favor of service extensions. By providing significantly broader authority for LAFCos to approve service extensions beyond SOIs in support of urban development, the proposed revisions could render SOIs moot as probable service area boundaries.

2. Lack of Stakeholder Outreach or Input. The potential legislative amendments that CALAFCO is considering have not been discussed or vetted with outside stakeholders, including the agricultural and environmental community. As the staff report for the February 10th Board meeting acknowledges, CALAFCO staff was asked to circulate the draft to outside stakeholders for comment to gauge the level of support or opposition to the proposal. While the proposed language has been circulated to all LAFCos only four letters have been received in response, (two in support, one in opposition, and one requesting additional information). Thus more time appears to be necessary for all LAFCos to review and respond to the proposal. It is of particular note that CALAFCO staff has been holding extensive meetings with the League of Cities, Building Industry Association and the California Rural Legal Assistance Foundation, but has evidently omitted many other important stakeholders from these meetings. There are many groups that should be included in these outreach efforts, such as the California Farm Bureau, League of Women Voters, Environmental Defense Center, Citizens Planning Association, SOAR, the Agricultural Futures Alliances throughout the State, and other environmental groups.

General support for the proposal was apparently stated at the 20 January 2012 Legislative Committee meeting. However, as the February 10th staff report to the Board states, “because there are some concerns from members and other stakeholders may have an interest, the Committee voted to return the proposal to the Board to affirm continued CALAFCO support.” Given this juncture and the glaring omission of input from numerous interested stakeholders, as well as from all LAFCos in the state, consideration

of this proposal by the CALAFCO Board on this critically important issue is simply premature. A bill should not be introduced (or supported) until extensive stakeholder outreach has been *conducted and considered* by the Committee.

Conclusion

In recognition of the problems described above, Santa Barbara LAFCo and Ventura LAFCo have both voted to oppose the proposed revisions. We support their opposition, and urge the Board to similarly oppose this proposal. At a minimum, the Board should defer supporting any revisions until all stakeholders have had an opportunity to review and provide input to CALAFCO. We look forward to coordinating with CALAFCO regarding the details and impacts of any proposed revisions to Government Code §56133. The protection of orderly growth boundaries and agricultural land, and the avoidance of urban sprawl, are the reasons LAFCo was created, and this proposal must be carefully reviewed in light of this mission. Please feel free to contact me at 963-1622 x113 with any questions.

Best Regards,

via e-mail

Christina McGinnis
OPEN Program Director, Environmental Defense Center