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South Bay
Irrigation District

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Vista Irrigation District

Harry Mathis
Public Member

Executive Officer

Michael D. Ott

**AGENDA
SPECIAL DISTRICTS ADVISORY COMMITTEE
FRIDAY, FEBRUARY 19, 2010, 9:30 A.M.
COUNTY ADMINISTRATION CENTER
ROOM 402A
1600 PACIFIC HIGHWAY
SAN DIEGO, CA 92101**

Agenda Item:

**Recommended
Action:**

- | | | |
|--|--|----------------------------------|
| 1. Roll Call | | |
| 2. Approval of Minutes of Meeting held November 20, 2009 | | Approve |
| 3. Consultant's Recommended Agenda Revisions | | Receive |
| 4. Committee Member / Consultant's Announcements | | Information |
| 5. Public Comment
Opportunity for persons to speak to the Committee on any subject within the Committee's jurisdiction, but not an item on today's agenda. Each speaker's presentation may not exceed 3 minutes. | | |
| 6. Selection of Chairperson and Vice Chairperson for 2010 | | Discussion/
Direction |
| 7. Discussion and input on final drafts of Legislative and Regulatory Guidelines: Water Supply and Availability | | Discussion/
Direction |
| 8. Proposed Legislative Policy L-107 – Jurisdictional Conflicts Associated with Proposed Development | | Discussion/
Direction |
| 9. Adjournment to the March 19, 2010 Meeting Date | | |

Note: Refreshments will be available at the meeting.

**LOCAL AGENCY FORMATION COMMISSION
SPECIAL DISTRICTS ADVISORY COMMITTEE
NOVEMBER 20, 2009 MEETING**

There being a quorum present, the meeting was convened at 9:33 a.m., by Chairman Tom Pocklington (Bonita-Sunnyside FPD) at the Leucadia Wastewater District offices in the City of Carlsbad. Attending were: **Committee Members** - Gary Croucher (Otay Water District), Judy Hanson (Leucadia WD), Douglas Humphrey (Resource Conservation District of Greater San Diego County), Larry Jackman (San Miguel Consolidated FPD), Margarette Morgan (Vista Fire Protection District); John Pastore (Rancho Santa Fe CSD), Jim Poltl (Vallecitos Water District); Dennis Shepard (North County Cemetery District), Terry Thomas (South Bay Irrigation District); Kimberly Thorner (Olivenhain MWD); Diana Towne (Rincon del Diablo, MWD); Richard Williamson (Borrego Water District). Absent were: **Committee Members** – Gary Arant (Valley Center MWD); Ron Fuller (Alpine FPD); Augie Scalzitti (Padre Dam MWD); Attending LAFCO Consultant, Harry Ehrlich; and members of the public - Paul Bushee (Leucadia Wastewater District); Dana Frieauf (San Diego CWA); and Mark Watton (Otay WD).

Item 2

Approval of Minutes of August 21, 2009

With Diana Towne abstaining, ON MOTION of Kimberly Thorner, and seconded by Larry Jackman, and unanimously approved by the remaining Committee members, the Committee dispensed with reading the August 21, 2009 minutes and approved said minutes.

Item 3

Consultant's Recommended Agenda Revisions

Harry Ehrlich indicated there are no revisions. Tom Pocklington indicated that there would be a tour of the Leucadia facility immediately following the meeting.

Item 4

Committee Member/Consultant's Announcements

Harry Ehrlich mentioned the tentative committee calendar for 2010 and a copy of the calendar was distributed to attendees.

Mr. Pocklington requested Committee members to exchange ideas on matters associated with their districts and areas of responsibility.

Item 4

Committee Member/Consultant's Announcements (Cont.)

Member Terry Thomas made note of a fact sheet that Sweetwater Authority distributes each year on water resources and that it is available for others to view. Member Diana Towne mentioned that Rincon del Diablo MWD is looking into a possible groundwater project in Harmony Grove area (Water Factory Project) as well as focusing more efforts on doing large residential customer water audits. Member Kimberly Thorner announced that Poseidon had "broken ground" last week on their desalination project in Carlsbad and that Olivenhain MWD had begun implementation of its "water demand offset" program and developers were actively participating with payments.

Item 5

Public Comment

No members of the public requested to speak.

Item 6

Discussion and input on Water Supply and Reliability Policy and Revised Draft of Policy Guidelines

Harry Ehrlich provided the Committee with a brief staff presentation and overview of updated Attachments A and B. He stated feedback was received from the Committee at the prior meeting and a letter received on November 12, 2009, from the San Diego CWA. The letter had been e-mailed out and copies were distributed to the committee at the meeting.

Mr. Ehrlich encouraged comments from the Committee and public attendees on the updated draft proposed guidelines.

Dana Friehauf of San Diego County Water Authority reviewed the comments of their November 6, 2009 letter and willingness to work with San Diego LAFCO on final drafting of the Guidelines. She stated that their prime concern is the process that LAFCO may use to make decisions on analysis of the water availability factors for annexations. She reminded the committee that CWA has a specific annexation policy adopted in 2006.

Mark Watton of Otay Water District pointed out a need for flexibility and two way discussion from local water agencies and LAFCO. He outlined the importance of alternative water supplies and potential for agencies to develop local offsets or sharing methods. He also suggested the clarification on number 3, of what a "collaborative effort" entails and that it is more than "communication" with agencies.

Item 6

Discussion and input on Water Supply and Reliability Policy and Revised Draft of Policy Guidelines (Cont.)

Gary Croucher commented on needing more clarification of the "level of expertise" from the agencies would entail. Mr. Ehrlich provided explanation of how LAFCO staff would review provided applications and supplemental reports, etc. to verify or validate application information, not do separate detailed studies unless required by conflicting comments or review after discussion with affected agencies, etc.

Kim Thorner suggested LAFCO receiving water supply reliability assurances through the input of the retail agency responsible for service or supply. She suggested that the local water supply agency "be relied upon to do the water supply availability analysis" and that a statement could be added to the proposed guidelines stating that it is the intent of LAFCO to rely upon the input and analysis of the local water agency to confirm the availability of water supply.

Larry Jackman commented that he supported the idea of one summary statement being added to the policy. Mr. Ehrlich agreed to look at this concept to see if approach could be considered in the next draft.

John Pastore questioned on what specific information LAFCO needs from special districts. He suggested that more details of what information is needed and how it will be used might help districts understand the purpose of the draft guideline policy.

Gary Croucher commented again on the accountability held at the district level. Particularly, on the smaller development projects the agencies' will have when signing the AB221 form. He feels this may generate questions from districts for LAFCO because of possibilities of legal liabilities involved. Mr. Ehrlich responded that he did not believe this to be an issue but that he would research it as the policy is reviewed.

More general comments were made by members Thomas, Williamson and Humphrey on concerns for considering projects and water availability, etc. Judy Hanson added that she is concerned that the perception that new developments are being processed and no new water may be available for some time and that this may be why the Commission believes that this policy is needed.

Harry Ehrlich requested any additional comments to be sent to him and he will consider in any revised draft of the guidelines to be prepared in the coming months.

Item 7**Status Report on Current Projects and Legislation**

Mr. Ehrlich provided a verbal short list of pending projects as information to the committee that may be considered in 2010. They include: the Rincon Estates Project in Escondido; a MSR in Yuima/Pauma Valley Water District area; and the Fire Service Island Analysis Program. Mr. Ehrlich also distributed a draft of the December 2009 Legislative Summary report that is going to the commission on December 7, 2009 as information.

A final discussion was held on updated water supply information from the CWA reports as requested at the last meeting.

No actions were taken on these updates.

Adjournment

There being no further business to come before the Special Districts Advisory Committee, it was noted that no meeting is planned for December 2009 and the meeting was adjourned at 11:10 a.m. to the scheduled tour.

**Ruth Arellano
Administrative Assistant**

Chairman

Bud Pocklington
South Bay
Irrigation District

February 19, 2010

6

Vice Chairman

Carl Hilliard
Councilmember
City of Del Mar

TO: Special Districts Advisory Committee

FROM: Harry Ehrlich, LAFCO Consultant

Members

Bill Horn
County Board of
Supervisors

SUBJECT: Consideration of Election of Chair and Vice-Chair for 2010

Dianne Jacob
County Board of
Supervisors

BACKGROUND: The Special Districts Advisory Committee Bylaws call for the offices of Chair and Vice-Chair be elected at the first business meeting of each year. The present incumbents have been in their offices for one complete year.

Donna Frye
Councilmember
City of San Diego

Mark Lewis
Mayor
City of El Cajon

The process to conduct the election is proposed to be as follows:

John Ingalls
Santa Fe
Irrigation District

- SDAC Consultant assumes role as Acting Chair to conduct the election
- Nominations from the committee for position of Chair
- Close nominations and conduct election by voice vote (unless secret written ballot requested)
- Chair resumes leadership of the meeting
- Nominations from the committee for position of Vice-Chair
- Close nominations and conduct election by voice vote (unless secret ballot requested)

Andrew L. Vanderlaan
Public Member

Alternate Members

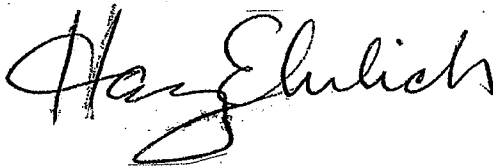
Greg Cox
County Board of
Supervisors

Sherri Lightner
Councilmember
City of San Diego

Jim Janney
Mayor
City of Imperial Beach

Respectfully submitted by,

Jo MacKenzie
Vista Irrigation District



Harry Mathis
Public Member

Executive Officer

Michael D. Ott

HARRY EHRLICH
Consultant
Special Districts Advisory Committee

Chairman

Bud Pocklington
South Bay
Irrigation District

February 19, 2010

7

Vice Chairman

Carl Hilliard
Councilmember
City of Del Mar

TO: Special Districts Advisory Committee

FROM: Harry Ehrlich, LAFCO Consultant

Members

Bill Horn
County Board of
Supervisors

SUBJECT: San Diego LAFCO Water Supply and Reliability Draft Policy Guidelines

Dianne Jacob
County Board of
Supervisors

SUMMARY:

In April 2008, the Commission requested that staff and the Special Districts Advisory Committee (Committee) review and consider how San Diego LAFCO should address proposed comprehensive policy positions on water supply and reliability for future project review and consideration. The Committee has held two in depth discussions on the draft guidelines and provided substantial input that is included in the final draft attachment documents.

Donna Frye
Councilmember
City of San Diego

Mark Lewis
Mayor
City of El Cajon

John Ingalls
Santa Fe
Irrigation District

Andrew L. Vanderlaan
Public Member

BACKGROUND:

Alternate Members

Greg Cox
County Board of
Supervisors

Sherri Lightner
Councilmember
City of San Diego

Jim Janney
Mayor
City of Imperial Beach

Jo MacKenzie
Vista Irrigation District

Harry Mathis
Public Member

As outlined in prior reports and presentations, the Cortese-Knox-Hertzberg Act (CKH) directs local LAFCO's to consider the availability of a reliable and adequate long term water supply as part of determinations on pending actions by the agency. Under State law, local agencies are to consider factors on water supply per GC Sections 56668 (b) and (k) and include compliance with GC Section 65352.5 (adequacy of existing and planned water supplies) in their submittals of proposals to LAFCO for any change of organization, including annexations. In the past, San Diego LAFCO has relied primarily upon the planning agency and the local water supply and purveyor agency to review and submit documentation attesting to adequacy of water supply capability.

Executive Officer

Michael D. Ott

Present and future submittals for San Diego LAFCO consideration may include potential impacts upon community services including water supply and reliability and how the responsible agencies will provide those services. Over the past six months, from the state down to the local water service agencies, the drought and supply limitation situation has resulted in declaration of a current Level 2 Water Supply Alert and advisory allocation reduction of eight (8) percent.

DISCUSSION:

At the Advisory Committee meetings in July and November 2009, the committee provided feedback on the draft guideline language. Staff members from Otay Water District and the San Diego County Water Authority (CWA) also attended and have provided comments.

The Commission directed that policy guidelines addressing legislative and regulatory factors on water supply be developed and a policy guideline be proposed on how to consider water supply and reliability for future project submittals to LAFCO. Taking into consideration that a variety of agencies influence water policy from the Federal, State and regional agency levels for both legislative and regulatory factors, a set of policy guidelines is proposed (see Attachment A). These guidelines would assist the Commission and staff in reviewing and addressing how proposed legislation and regulatory actions might impact the LAFCO processes. Additionally, for Commission consideration of proposals for annexations or reorganizations that include water or wastewater supply and service, a set of guidelines are proposed for use by staff and the Commission in addressing proposals (see Attachment B).

DRAFT LEGISLATIVE POLICY GUIDELINES:

The proposed Policy Guidelines will provide general direction on how any legislative or regulatory proposal impacts the mission and purpose of the San Diego LAFCO relating to water supply and reliability including the requirements of the Cortese-Knox-Hertzberg Act of 2000, as amended. Such policy issues may include factors such as to the planning for and provision of water supply and delivery service in accordance with GC Section 56668 and GC Section 65352.5; potential changes in the process of considering reorganizations or service delivery models and regulatory policy that may limit or constrain local or regional management of water resources. It is envisioned that staff would monitor and report to the Commission on activities of federal, state and regional agencies that may impact San Diego LAFCO's capability to carry out our mandated procedures relating to governance and water supply. Staff would be directed to advocate the intent and achievement of the Policy Guidelines where ever possible.

Managing resources at the regional or local agency level and developing the most efficient and responsive service delivery models are foundational principles that should guide San Diego LAFCO. Carrying forward these Policy Guideline principles will help our local agencies provide successful services and meet the needs of the public we serve. San Diego LAFCO staff will include efforts to collaborate with all local government units to understand and hopefully support our efforts.

DRAFT PROPOSAL CONSIDERATION GUIDELINES:

In any proposal before LAFCO that includes review of water service capability, the Cortese-Knox-Hertberg Act requires that the Commission consider the present and future ability of the agency to which an annexation or reorganization of services is proposed to demonstrate the availability of an adequate, reliable and sustainable supply of water for the

project or service area. Water supply and reliability are becoming a more complex group of factors and capabilities to consider. The uses of alternative water supplies such as recycled water, groundwater and conservation and demand offset programs are expected to increase as a segment of the supply portfolio. A review and verification of the proposed project capability including the local service agency should be expected as part of a proposal processing. Reliance upon the data and submittal of commitment by the servicing local water agency is expected to remain the key component of LAFCO review and analyses to enable that LAFCO make its final determination that capability and reliability are included.

Therefore LAFCO staff will review and where needed validate the documentation submitted as part of any proposal. Resource documents such as agency Urban Water Management Plans, Water Master Plans, Capital improvement Plans and related documents such as conservation strategies should be referenced and submitted with the application. A technical report describing how the project will be served should be included to assist LAFCO in the analysis of the submittal. LAFCO staff anticipate continued close coordination with local agencies and the San Diego County Water Authority (Authority) on how these processes will work most effectively. As part of all projects, a CEQA analysis will also include review and description of how water supply and reliability have been evaluated for the project. Major projects may have full EIR's discussing these issues in more detail.

CONCLUSION:

While no one template or policy approach can be expected to fit all possible legislative or regulatory proposals as well as proposals for organization of service models, the proposed policy guideline approaches are presented to guide staff on addressing outside entities that will influence how LAFCO and local agencies may carry out our missions. They will also help ensure that a plan for future water supply and sustainability will be included in proposals to help guide future considerations by local planning agencies to consider these major factors. The intent is that once policy direction is received for this increasingly important emphasis on water supply and reliability, the current application form(s) for proposals will be amended to request and document the necessary information and data for the project review.

It should be noted that the many water agencies and the Authority are also updating their policies on water supply and service due to the current drought and state supply emergency. It is anticipated that the implementation of the LAFCO Policy Guidelines will encourage input and cooperation with the water agencies and the Authority for coordinated action in the future.

This report is provided to the SDAC to provide one more opportunity for review and a recommendation on the draft guideline policies prior to consideration by the Commission at their upcoming March 2010 meeting.

RECOMMENDATION:

That the Special Districts Advisory Committee recommend to the Commission to review and adopt the Water Supply Policy and Review Guidelines included as Attachments A & B herein.

Respectfully submitted by,

A handwritten signature in black ink, appearing to read "Harry Ehrlich". The signature is written in a cursive style with a large, sweeping initial "H".

HARRY EHRLICH
Consultant
Special Districts Advisory Committee

Attachment A - Water Supply Policy Guideline
Attachment B - Water Supply Review Guideline

Attachment A

**San Diego LAFCO
Proposed Policy Guidelines
For
Water Supply and Reliability
DRAFT (01/21/2010)**

1. Decision-making with regard to water supply and reliability should be kept at the regional and local level through coordinated activities of local water agencies, cities, special districts and the County of San Diego.
2. Water supply development, reliability, conservation and sustainability are essential principles to ensure an adequate and viable economic environment for present and future residents in San Diego County. Resources should be developed to be diversified where possible yet under local agency control and management.
3. The federal, state and regional agency's role in water supply development should be to provide intraregional coordination and incentives for supply reliability and to reduce or remove regulatory hurdles and barriers to conjunctive uses.
4. Proposed actions by various agencies or entities to manage or control water supply and reliability should not restrict the ability of LAFCO to make required determinations on proposals before them subject to the Cortese-Knox-Hertzberg Act of 2000.
5. Decisions by San Diego LAFCO shall encourage that long-range planning for water supply and reliability be integrated within the local water agencies, cities, special districts, County of San Diego, SANDAG and San Diego LAFCO. San Diego LAFCO's role is to oversee the logical service delivery organizational structure for future services.
6. San Diego LAFCO will collaborate with, monitor and provide input to applicable federal, state, regional and local agencies and policy makers on issue impacting water supply and reliability, incorporating the Water Supply Policy Guidelines as adopted by the Commission from time to time.

Attachment B

**San Diego LAFCO
Proposed Regulatory Policy Guidelines
For
Processing of Proposals Impacting Water Supply and Reliability
Revised (01/20/2010)**

1. San Diego LAFCO's role is to oversee the logical service delivery through efficient local governmental organization structure for future services as defined in Cortese-Knox-Hertzberg Act of 2000. The Commission shall encourage that long range planning for availability of water supply and reliability should be integrated within the local water agencies, cities, special districts, County of San Diego, SANDAG and San Diego LAFCO.
2. Decision-making with regard to development of water supply and reliability should be focused at the regional and local level through coordinated activities and planning of local water agencies, cities, special districts and the County of San Diego. The Commission shall support these efforts where possible to meet legislative and regulatory goals and mandates.
3. The development of alternative water sources, conservation, demand management and demand impact offset programs to mitigate new projects or services by regional and/or local water agencies and proponents of proposals will be considered in reviewing proposals submitted to the Commission. LAFCO will collaborate (seek input from and provide comments to) communicate with agencies on the establishment of offset water supply and availability programs and criteria as they are developed. ~~Linkages with other LAFCO program priorities such as preservation of prime agricultural lands and open space will be included in reviewing proposals and project impacts.~~
4. During its review and processing of proposals, the Commission shall place primary reliance on the input and recommendations of the local agency responsible for availability of water supply and delivery when a proposal is submitted for consideration that may impact an agencies' service area, sphere of influence or services being provided. It will be the intent of LAFCO to rely upon the subject agency to provide sufficient analysis of proposals impacting water supply and availability for LAFCO review. The use of resource documents such as Master Plans for Facilities and Urban Water Master Plans of the regional and local water agency will be encouraged as part of the project submittal process. This process is routinely included as part of submittal of "will serve letters" to planning agencies. Where more than one service area or agency is impacted by a proposal, the Commission shall seek input from all affected agencies.
5. The Commission encourages input from the Special Districts Advisory Committee on policy and service related proposals and shall consider the input by the committee on projects impacted by water supply and availability issues. The Executive Officer may refer those proposals to the committee that he/she believes are relevant for review and input prior to submitting them to the Commission for consideration.

February 19, 2010

Chairman

Bud Pocklington
South Bay
Irrigation District

TO: San Diego LAFCO Special Districts Advisory Committee

Vice Chairman

Carl Hilliard
Councilmember
City of Del Mar

FROM: Michael D. Ott, Executive Officer
Robert Barry, Local Governmental Analyst

SUBJECT: Proposed Legislative Policy L-107 "Jurisdictional Conflicts
Associated with Proposed Development"

Members

Bill Horn
County Board of
Supervisors

EXECUTIVE SUMMARY

Dianne Jacob
County Board of
Supervisors

In the review of jurisdictional changes involving cities and special districts, a recurring issue for the Commission has been service, financial, and land use conflicts between affected jurisdictions. Unless these conflicts are identified and successfully resolved through the local regulatory processes, the subsequent LAFCO review process can be delayed.

Donna Frye
Councilmember
City of San Diego

An approach that the San Diego LAFCO is exploring to lessen these conflicts and potentially avoid delays in the LAFCO proposal review would be the use of a jurisdictional consultation process. Accordingly, LAFCO staff is evaluating whether an early consultation process between the affected public agencies could be used to identify any potential or existing jurisdictional conflicts as well as to provide an opportunity for discussion and resolution of the identified issues prior to submittal of the proposal to LAFCO.

Mark Lewis
Mayor
City of El Cajon

John Ingalls
Santa Fe
Irrigation District

Andrew L. Vanderlaan
Public Member

Alternate Members

Greg Cox
County Board of
Supervisors

At the December 7, 2009 LAFCO meeting, San Diego LAFCO reviewed and accepted the attached draft policy for circulation among affected local agencies for a 60-day comment period prior to returning to the Commission. The Commission also encouraged participation of the Cities and Special Districts Advisory Committees to provide an opportunity to discuss the draft policy and provide comments for Commission consideration. Accordingly, a meeting of the Special Districts Advisory Committee has been scheduled for February 19, 2010, and a meeting of the Ad Hoc Cities Advisory Committee has been scheduled for February 22, 2010.

Sherri Lightner
Councilmember
City of San Diego

Jim Janney
Mayor
City of Imperial Beach

Jo MacKenzie
Vista Irrigation District

The draft policy was subsequently distributed to the city managers of the 18 incorporated cities, the County of San Diego, and the general managers of the 89 special districts in San Diego County for a 60-day review period that ended on February 11, 2010.

Harry Mathis
Public Member

Executive Officer

Michael D. Ott

The following discussion describes the subject policy and the associated statutory requirements of LAFCO, the comments received on the draft policy during the review period, and potential options for the Cities and Special Districts Advisory Committees to review and discuss.

BACKGROUND

Proposed development projects that involve annexation or detachment of territory to or from a city or special district can result in financial and service impacts and land use conflicts between the proposed and existing jurisdictions. LAFCO is prohibited by State Law from directly regulating land use density or intensity, property development, or subdivision requirements (Government Code § 56375(a)(6)); However, LAFCO is required to consider a number of factors, such as: the proposal's consistency with city or county general plans (Government Code § 56668(g); the affects of a proposal on adjacent areas (Government Code § 56668(c); the comments of any affected local agency or other public agency (Government Code § 56668(i); and, any information relating to existing land use designations (Government Code § 56668(n). (Refer to Attachment No. 1)

San Diego LAFCO currently has two adopted local policies that are associated with the referenced statutory requirements: Policy L-100 (City Annexation of Unincorporated Territory within Special Districts), and Policy L-103 (Recognition of Unincorporated Communities). Policy L-100 is intended to provide guidance to mitigate annexation disputes between cities and special districts; Policy L-103 is intended to provide guidance in recognizing and preserving unincorporated communities during incorporation and city sphere of influence update proceedings.

These two adopted policies partially address the potential jurisdictional conflicts associated with annexations to cities and special districts; however, there may be a need for a more specific San Diego LAFCO policy to provide an opportunity for early consultation between the County and adjacent land use agencies to comprehensively identify and resolve any jurisdictional or local community conflicts prior to submittal for LAFCO consideration.

PROPOSED LEGISLATIVE POLICY L-107

Proposed LAFCO Legislative Policy L-107 is intended to establish a procedure for cities, special districts, and the County of San Diego to discuss and potentially resolve jurisdictional conflicts associated with development projects that require LAFCO discretionary approvals. (Refer to Attachment No. 2)

The proposed policy requires that, prior to submission of a proposal requesting LAFCO consideration of a city or special district jurisdictional change for unincorporated territory, representatives from the affected city, special districts, and the County of San Diego shall meet at the earliest possible stage for the purpose of identifying and resolving issues associated with the proposed jurisdictional change.

The proposed consultation process should identify any 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 any potential impacts to service levels or financial ability to sustain service levels); and, any other local community or governmental concerns.

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 Commission would then give great weight to the jurisdictional agreement in their consideration of the proposed jurisdictional change to the extent that it is consistent with State Law and San Diego LAFCO policies and procedures.

If no agreement is reached between the local agencies and the County of San Diego, the subject proposal may be deemed incomplete and the affected agencies may be requested to continue discussions until an agreement is reached.

COMMENTS RECEIVED DURING THE REVIEW PERIOD

As of the date of this LAFCO staff report, one comment regarding the draft policy was submitted (Refer to Attachment No. 3). Comments received after the release of this report will be forwarded to the advisory committees under separate cover.

In a letter dated December 24, 2009, the City of Encinitas agreed with the establishment of a consultation process for jurisdictions to discuss and address any differences; however, the City requested that "provision #5" of draft Policy L-107 be deleted for the following reasons:

1. A difference of opinion between agencies should not be used to deem an application incomplete as the differences may not be resolvable.
2. An agency may use Provision #5 as leverage to accomplish their goals regardless of whether those goals are reasonable.
3. Provision #5 makes the determination of a complete or incomplete application discretionary. Determining whether or not an application is complete should be nondiscretionary. The policy provides no guidance to staff when an incomplete application determination is made other than "if no agreement is reached...the proposal may be deemed incomplete." This could result in inappropriate use of discretion.
4. Provision #4 gives "great weight" to those proposals that reach an agreement between agencies. This provides adequate incentive for jurisdictions to resolve differences. As such, provision #5 is not necessary.

The City concludes that a jurisdiction should be allowed to submit an application to LAFCO without the threat of being deemed incomplete if jurisdictional differences are not resolved.

STAFF RESPONSE TO COMMENTS

Provisions in State Law specify the process for determining the status of a submitted jurisdictional change proposal. The status determination of a proposal application is discretionary in order for the subject application to adequately provide the proposal elements required by State Law, as well as to satisfy any local policy requirements adopted by the respective Commission. As stated previously, Draft Policy L-107 is intended to facilitate the expedited processing of a submitted proposal application by identifying, addressing, and potentially resolving any conflicts prior to the submittal to LAFCO for review and consideration.

While adoption of a new policy or amendment of draft Policy L-107 would not concurrently alter the provisions in State Law regarding the administrative determination of a proposal's status, commenting agencies have expressed the concern that a proposal should not be indefinitely deemed incomplete if the proponent has faithfully attempted to resolve the identified conflict(s) per the proposed consultation policy guidelines. To address this concern, the advisory committees may want to consider several policy options outlined below.

OPTIONS FOR ADVISORY COMMITTEE REVIEW AND DISCUSSION

1. Retain the draft policy as currently stated. This would return the draft policy to the Commission (along with copies of the submitted comments on the draft) without changes and establish the consultation policy with the intent to facilitate expedited LAFCO processing, or
2. Revise the draft policy to remove provisions 4 and/or 5 from draft Policy L-107. This option would remove policy guidelines in response to comments received during the 60-day draft policy review and comment period, and/or,
3. Amend the draft policy to provide an appeal process for Commission consideration of the proposal (once all other required application elements have been satisfactorily completed) without agreement on the identified conflict(s), if the proponent provides written notification of unsatisfactory completion of the consultation process described in the draft policy. A statement that identifies the conflict(s) that can not be resolved should accompany the appeal, or,
4. Any other revisions suggested by the Advisory Committee.

The comments received from both the Cities and Special Districts Advisory Committees will be conveyed to the Commission with the final recommended version of the policy. Therefore it is

REQUESTED: That the Special Districts Advisory Committee:

1. Review and discuss the proposed draft Legislative Policy L-107 and potential options; and,
2. Provide comments to the Executive Officer for Commission consideration.

Respectfully submitted,



MICHAEL D. OTT
Executive Officer



ROBERT B. BARRY, AICP
Local Governmental Analyst

MDO:RB:ra

Attachments:

1. Relevant LAFCO statutes
2. Draft San Diego LAFCO Policy L-107
3. Comments received during review period

RELEVANT LAFCO STATUTES

Government Code §56658 (d): *Except when a commission is the lead agency pursuant to Section 21067 of the Public Resources Code (CEQA), the executive officer shall determine within 30 days of receiving an application whether the application is complete and acceptable for filing or whether the application is incomplete.*

Government Code §56652. *Each application shall be in the form as the commission may prescribe and shall contain all of the following information:*

- (a) A petition or resolution of application initiating the proposal.*
- (b) A statement of the nature of each proposal.*
- (c) A map and description, acceptable to the executive officer, of the boundaries of the subject territory for each proposed change of organization or reorganization.*
- (d) Any data and information as may be required by any regulation of the commission.*
- (e) Any additional data and information, as may be required by the executive officer, pertaining to any of the matters or factors which may be considered by the Commission.*
- (f) The names of the officers or persons, not to exceed three in number, who are to be furnished with copies of the report by the executive officer and who are to be given mailed notice of the hearing.*

Public Resources Code §21067. *"Lead agency" means the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment.*

Government Code §56658(h): *If an application is determined not to be complete, the executive officer shall immediately transmit that determination to the applicant specifying those parts of the application which are incomplete and the manner in which they can be made complete.*

Government Code §56668: *Factors to be considered in the review of a proposal shall include, but not be limited to, all of the following:*

- (a) Population and population density; land area and land use; per capita assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas, during the next 10 years.*
- (b) The need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed incorporation, formation, annexation, or exclusion and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas. "Services," as used in this subdivision, refers to governmental services whether or not the services*

are services which would be provided by local agencies subject to this division, and includes the public facilities necessary to provide those services.

- (c) The effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county.
- (d) The conformity of both the proposal and its anticipated effects with both the adopted commission policies on providing planned, orderly, efficient patterns of urban development, and the policies and priorities set forth in Section 56377.
- (e) The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by Section 56016.
- (f) The definiteness and certainty of the boundaries of the territory, the nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory, and other similar matters affecting the proposed boundaries.
- (g) A regional transportation plan adopted pursuant to Section 65080, and consistency with city or county general and specific plans.
- (h) The sphere of influence of any local agency which may be applicable to the proposal being reviewed.
- (i) The comments of any affected local agency or other public agency.
- (j) The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for those services following the proposed boundary change.
- (k) Timely availability of water supplies adequate for projected needs as specified in Section 65352.5.
- (l) The extent to which the proposal will affect a city or cities and the county in achieving their respective fair shares of the regional housing needs as determined by the appropriate council of governments consistent with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7.
- (m) Any information or comments from the landowner or owners, voters, or residents of the affected territory.
- (n) Any information relating to existing land use designations.
- (o) The extent to which the proposal will promote environmental justice. As used in this subdivision, "environmental justice" means the fair treatment of people of all races, cultures, and incomes with respect to the location of public facilities and the provision of public services.

56375(a)(6): A commission shall not impose any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements.

DRAFT

Subject:

JURISDICTIONAL CONFLICTS ASSOCIATED WITH PROPOSED DEVELOPMENT

Purpose

To establish a procedure for cities, special districts, and the County of San Diego to discuss and potentially resolve jurisdictional conflicts associated with development projects that require LAFCO discretionary approval(s).

Background

Proposed development projects that involve annexation of unincorporated territory to a city or special district can result in conflicts between the proposed and existing land uses and zoning of the respective land use jurisdictions. While LAFCO is prohibited by State Law from directly regulating land use density or intensity, property development, or subdivision requirements (Government Code § 56375(a)(6)), it is required to consider in the review of a jurisdictional proposal, the consistency with city or county general plans (Government Code § 56668(g)).

In terms of city annexation proposals, Government Code § 56375(a)(7) requires LAFCO to base its decision on a proposal to annex territory to a city upon the general plan and rezoning of the subject city. However, LAFCO is also required to consider the following factors in the review of a proposal: the effects of a proposal on adjacent areas (Government Code § 56668(c); the proposal's consistency with city or county general and specific plans (Government Code § 56668(g); the comments of any affected local agency or other public agency (Government Code § 56668(i); and, any information relating to existing land use designations (Government Code § 56668(n). With the exception of (Government Code § 56375(a)(7), LAFCO must consider the same factors when evaluating the annexation of unincorporated territory to special districts.

Within the local development approval process, LAFCO staff has historically encouraged the lead agency for the development to consult with the adjacent jurisdictions in order to identify and resolve any potential jurisdictional issues prior to LAFCO submittal.

To facilitate discussion and resolution of any inconsistencies between the affected

land use authorities, the following policy has been adopted to encourage logical and orderly development that reflects the concerns of the affected city, special districts, and the County of San Diego.

Policy

It is the policy of the San Diego Local Agency Formation Commission that:

1. Prior to submission of a proposal requesting LAFCO consideration of a city or special district jurisdictional change for unincorporated territory, representatives from the affected city, special districts, and the County of San Diego shall meet at the earliest possible stage for the purpose of identifying and resolving issues associated with the proposed jurisdictional change.
2. The consultation process described in provision no. 1 should identify any jurisdictional concerns related to:
 - a. differing development standards;
 - b. existing and/or planned land uses and zoning, including densities, community character, and appropriate jurisdictional transition areas;
 - c. the existing and/or planned provision of governmental services, including any potential impacts to service levels or financial ability to sustain service levels; and,
 - d. any other local community or governmental concerns.
3. If an agreement is reached regarding provision no. 2, the subject proposal's LAFCO application shall include signed confirmation by representatives of the agencies.
4. The Commission shall give great weight to the agreement in its consideration of the proposed jurisdictional change to the extent that it is consistent with State Law and San Diego LAFCO policies and procedures.

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LEGISLATIVE POLICY L-107

5. If no agreement is reached between the local agencies and the County of San Diego, the proposal may be deemed incomplete and the affected agencies may be requested to continue discussions until an agreement is reached.

Adopted:

Cross-reference:

SAN DIEGO LAFCO POLICY:

- L-100 CITY ANNEXATION OF UNINCORPORATED TERRITORY WITHIN SPECIAL DISTRICTS
- L-103 RECOGNITION OF UNINCORPORATED COMMUNITIES

SAN DIEGO LAFCO PROCEDURES:

- SPHERES OF INFLUENCE
- LAFCO-INITIATED PROPOSALS



*City of Encinitas
City Manager's Office*

December 24, 2009

Michael D. Ott
Executive Officer
San Diego Local Agency Formation Commission
1600 Pacific Highway, Room 452
San Diego, CA 92101

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DEC 30 2009
SAN DIEGO LAFCO

RE: Comments on Draft Legislative Policy L-107
Jurisdictional Conflicts Associated with Proposed Development

Dear Mr. Ott:

Thank you for the opportunity to comment on the draft Legislative Policy L-107. We understand that the purpose of the policy is to establish a procedure for cities, special districts and County to discuss and potentially resolve jurisdictional conflicts prior to application submittal to LAFCO.

The City of Encinitas agrees with establishing a process for jurisdictions to discuss and address any differences with the overall goal of coming to a resolution. However, provision 5 of Policy L-107 raises some concerns. Provision 5 states "if no agreement is reached ..., the proposal may be deemed incomplete and affected agencies may be requested to continue discussion until an agreement is reached."

We recommend the deletion of provision #5 based on the following:

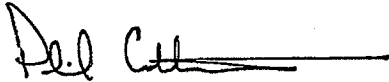
1. A difference of opinion between agencies should not be used to deem an application incomplete. Differences may not be resolvable.
2. An agency may use Provision #5 as leverage to accomplish their goals regardless of whether those goals are reasonable.
3. Provision #5 makes the determination of a complete or incomplete application discretionary. Determining whether or not an application is complete should be nondiscretionary. The policy provides no guidance to staff when an incomplete determination is made other than "if no agreement is reached ... the proposal may be deemed incomplete." This could result in inappropriate use of discretion.
4. Provision #4 gives "great weight" to those proposals that reach an agreement between agencies. This provides adequate incentive for jurisdictions to resolve differences. As such, provision #5 is not necessary.

M. Ott
December 24, 2009
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To reiterate, the City supports the requirement for agencies to communicate with each other with the goal of resolving any differences; however, if such differences are not resolved, a jurisdiction should be allowed to submit an application to LAFCO without the threat of being deemed incomplete.

Again, thank you for the ability to comment on Policy L-107. Should have any questions, or need additional information please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Phil Cotton", followed by a horizontal line extending to the right.

Phil Cotton,
City Manager

cc: Patrick Murphy, Director of Planning and Building