



# VISTA Fire Protection District

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November 3, 2022

The Honorable Jim Desmond [jim.desmond@sdcounty.ca.gov]  
Chair, San Diego Local Agency Formation Commission  
County of San Diego Administration Center  
1600 Pacific Highway, Room 302  
San Diego, CA 92101

RE: Agenda Item 7a, "Draft Policy Establishment on Out-of-Agency Services"  
Hearing Date: November 7, 2022 – Regular Commission Meeting

Dear President Desmond:

The Vista Fire Protection District wishes to respectfully provide comment on agenda item 7a, "Draft Policy Establishment on Out-of-Agency Services," which will be taken up by the San Diego Local Agency Formation Commission ("SDLAFCO") at its November 7, 2022 regular meeting. It is Vista Fire Protection District's view that the draft policy is materially deficient, having been crafted without proper consideration, and may represent an expansion of the authority of local agency formation commissions ("LAFCOs") without a corresponding basis in existing law.

This draft policy is premature, with the potential to create additional problems. This is getting ahead of any effort between stakeholders to work collaboratively on identifying problems with this policy. LAFCOs have historically been successful in working together with stakeholders to remediate issues; efforts launched oppositionally and without consensus from affected parties are more likely to be unsuccessful. SDLAFCO should instead focus on a deliberative, inclusive approach that provides ample, actual opportunity for stakeholder feedback.

Additionally, this draft policy establishes an extra-statutory authority for LAFCOs, based on a disputed interpretation of the relevant California Government Code section(s). Notably, in 2020, the San Diego Local Agency Formation Commission approved the sponsorship of potential legislation to amend California Government Code section 56133, with the goal of inserting language that would provide local agency formation commissions with the authority to make determinations as to whether services provided outside the boundaries of a local agency fell under one of the enumerated exemptions listed under 56133. SDLAFCO, apparently recognizing that the language in statute was devoid of any such basis for asserting commissions possessed the requisite authority, sought its addition through legislation, an acknowledgement that commissions otherwise lacked the authority to adjudicate whether an exemption applied to the extraterritorial provision of services. Under current law, cities and districts rely on the exemptions provided for within subdivision (e) of Code section 56133 exactly as they appear within the statute; section 56133 does not grant local agency formation commissions the authority to determine

whether an exemption to the commission consideration process applies in a given scenario— rather, subdivision (e) of section 56133 simply states that, in certain situations enumerated therein, a city or district need not first request and receive approval from a commission before providing new or extended services outside jurisdictional boundaries. Additionally, the draft policy sidesteps the role of California’s courts— under current law, local agencies implement the law, and the courts interpret the law. This draft policy turns that on its head, unilaterally giving the executive officer of a local agency formation commission the power to interpret and implement state law.

Furthermore, this policy has the potential to require, without discernable stakeholder input, that LAFCOs review significantly more applications, while interfering with the provision of services that have sustained communities without incident.

Numerous issues with the draft policy, as highlighted above, evince the shortfall of having proceeded with such an initiative without rigorous, thoughtful discussion. For these reasons, the Vista Fire Protection District respectfully advises that the San Diego Local Agency Formation Commission table its consideration of the draft policy on out-of-agency services, and instead directs commission staff to begin anew in an approach aimed at obtaining feedback from affected agencies.

Please contact me at [jelliott2k@gmail.com](mailto:jelliott2k@gmail.com) if you have any questions about this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Elliott", written in a cursive style.

James Elliott  
Vice President, Board of Directors  
Vista Fire Protection District

CC:

Keene Simonds, Executive Officer, San Diego County Local Agency Formation Commission  
[[lafco@sdcounty.ca.gov](mailto:lafco@sdcounty.ca.gov)]

Michaela Peters, Administrative Assistant, San Diego County Local Agency Formation Commission  
[[michaela.peters@sdcounty.ca.gov](mailto:michaela.peters@sdcounty.ca.gov)]

Dieu Ngu, GIS/IT Analyst, San Diego County Local Agency Formation Commission  
[[dieu.ngu@sdcounty.ca.gov](mailto:dieu.ngu@sdcounty.ca.gov)]

Marcus Detwiler, Associate Legislative Representative, California Special Districts Association  
[[advocacy@cdda.net](mailto:advocacy@cdda.net)]



*...Dedicated to Community Service*

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[otaywater.gov](http://otaywater.gov)

November 4, 2022

The Honorable Jim Desmond  
Chair, San Diego Local Agency Formation Commission  
County of San Diego Administration Center  
1600 Pacific Highway, Room 302  
San Diego, CA 92101  
[jim.desmond@sdcounty.ca.gov](mailto:jim.desmond@sdcounty.ca.gov)

**RE: Agenda Item 7a, "Draft Policy Establishment on Out-of-Agency Services"**

Hearing Date: November 7, 2022 – *Regular Commission Meeting*

Dear President Desmond:

The Otay Water District wishes to respectfully provide comment on agenda item 7a, "Draft Policy Establishment on Out-of-Agency Services," which will be taken up by the San Diego Local Agency Formation Commission ("SDLAFCO") at its November 7, 2022 regular meeting. It is Otay Water District's view that the draft policy is materially deficient, having been crafted without proper consideration, and may represent an expansion of the authority of local agency formation commissions ("LAFCOs") without a corresponding basis in existing law.

This draft policy is premature, with the potential to create additional problems. This is getting ahead of any effort between stakeholders to work collaboratively on identifying problems with this policy. LAFCOs have historically been successful in collaborating with stakeholders to remediate issues; efforts launched oppositionally and without consensus from affected parties are more likely to be unsuccessful. SDLAFCO should instead focus on a deliberative, inclusive approach that provides ample, actual opportunity for stakeholder feedback.

Additionally, this draft policy establishes an extra-statutory authority for LAFCOs, based on a disputed interpretation of the relevant California Government Code section(s). Notably, in 2020, the San Diego Local Agency Formation Commission approved the sponsorship of potential legislation to amend California Government Code section 56133, with the goal of inserting language that would provide local agency formation commissions with the authority to make determinations as to whether services provided outside the boundaries of a local agency fell under one of the enumerated exemptions listed under 56133. SDLAFCO, apparently recognizing that the language in statute was devoid of any such basis for asserting commissions possessed the requisite authority, sought its addition through legislation, an acknowledgement that commissions otherwise lacked the authority to adjudicate whether an exemption applied to the extraterritorial provision of services. Under current law, cities and districts rely on the exemptions provided for within subdivision (e) of Code section 56133 exactly as they appear within the statute; section 56133 does not grant local agency formation commissions the authority to determine whether an exemption to the commission consideration process applies in a given scenario— rather, subdivision (e) of section 56133 simply states that, in certain situations enumerated therein, a city or district need not first request and receive approval from a commission before providing new or extended services outside jurisdictional boundaries. Additionally, the draft policy sidesteps the role of California's courts— under current law, local agencies implement the law, and the courts interpret the law. This draft policy turns that on its head, unilaterally giving the executive officer of a local agency formation commission the power to interpret and implement state law.

Furthermore, this policy has the potential to require, without discernable stakeholder input, that LAFCOs review significantly more applications, while interfering with the provision of services that have sustained communities without incident.

Numerous issues with the draft policy, as highlighted above, evince the shortfall of having proceeded with such an initiative without rigorous, thoughtful discussion. For these reasons, the Otay Water District respectfully advises

Otay Water District

RE: Agenda Item 7a, "Draft Policy Establishment on Out-of-Agency Services"

Page 2 of 2

that the San Diego Local Agency Formation Commission table its consideration of the draft policy on out-of-agency services, and instead directs commission staff to begin anew in an approach aimed at obtaining feedback from affected agencies.

Please contact me at 619-670-2210 or [jose.martinez@otaywater.gov](mailto:jose.martinez@otaywater.gov) if you have any questions about this letter.

Sincerely,



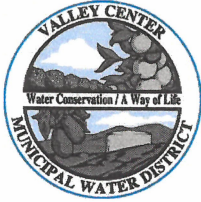
Jose Martinez  
General Manager  
Otay Water District

CC: Keene Simonds, Executive Officer, San Diego County Local Agency Formation Commission  
[lafco@sdcounty.ca.gov](mailto:lafco@sdcounty.ca.gov)

Michaela Peters, Administrative Assistant, San Diego County Local Agency Formation Commission  
[michaela.peters@sdcounty.ca.gov](mailto:michaela.peters@sdcounty.ca.gov)

Dieu Ngu, GIS/IT Analyst, San Diego County Local Agency Formation Commission  
[dieu.ngu@sdcounty.ca.gov](mailto:dieu.ngu@sdcounty.ca.gov)

Marcus Detwiler, Associate Legislative Representative, California Special Districts Association  
[advocacy@cdda.net](mailto:advocacy@cdda.net)



# VALLEY CENTER MUNICIPAL WATER DISTRICT

A Public Agency Organized July 12, 1954

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November 4, 2022

Honorable Jim Desmond, Chair  
Honorable Members of the Commission  
San Diego County Local Agency Formation Commission  
2550 Fifth Avenue, Suite 725  
San Diego, CA 92103

*Subject: San Diego LAFCO – Agenda Item 7a – Draft Policy Establishment on Out-of-Agency Services (11/7/22)*

Chair Desmond;

After reviewing the Draft Policy referenced above, it seems the proposed Draft Policy is in contravention of current state statute, specifically Government Code Section 56133 (d). As currently written, 6. *Final Disposition* states “Once the Commission or Executive Officer take actions – whether to approve, approve with conditions or deny – on out-of-agency service requests **the decisions are final and cannot be appealed**” (emphasis added).

However, GC §56133 (d) states in part that “The commission or executive officer shall approve, disapprove, or approve with conditions the extended services. If the new or extended services are disapproved or approved with conditions, **the applicant may request reconsideration, citing the reasons for reconsideration**” (emphasis added).

If the *Final Disposition* section of the Draft Policy assumes the Commission or Executive Officer’s decision is final after the applicant has an opportunity to seek and have reconsideration by the Commission or Executive officer (or both), as provided by the existing Government Code, it should so state. If that indeed is the case, then the policy should also include provisions and procedures for an applicant to apply for the reconsideration process, and then go through the reconsideration process. For example, a reconsideration process is expressly contemplated in the Commission’s policy on Fire Protection Contracts.

Hopefully, the Commission will direct LAFCO staff to return with an updated Draft Policy that conforms to Government Code Section 56113 (d) and contains provisions to permit applicants to seek and secure reconsideration of a request to provide new or expanded out-of-agency services.

Please feel free to contact us if you should have any questions or need additional information.

Sincerely,

Gary Arant  
General Manager

cc: Oliver Smith, VCMWD Board Member *and* SD LAFCO Special District Advisory Committee Representative  
Keene Simonds, *Executive Officer* SD LAFCO