

**A REPORT BY
THE 2012-2013 CONTRA COSTA COUNTY GRAND JURY**
725 Court Street
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REPORT 1303

**THE ROLE OF THE LOCAL AGENCY
FORMATION COMMISSION**

Is the Commission Realizing Its Full Potential?

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Contra Costa County Grand Jury Report 1303

The Role of the Local Agency Formation Commission

Is the Commission Realizing Its Full Potential?

TO: Contra Costa County Local Agency Formation Commission

SUMMARY

Local Agency Formation Commissions (LAFCOs) have been in existence since 1963 when the California Legislature created them. Originally designed to coordinate the timely development of local government agencies and their services while protecting agricultural and open-space resources, their duties were expanded in 1994 to encompass the authority to initiate proposals that include the dissolution or consolidation of special districts or the merging of existing subsidiary districts. In 2000, the responsibility to perform Municipal Services Reviews (MSRs) focused on municipal services was added. Portrayed by some as the “watchdog” of local governmental agencies, LAFCOs have broad authority which includes developing and determining Spheres of Influence (SOIs), and examining governance, fiscal accountability and sustainability, operational efficiency and effectiveness, and service delivery.

The Contra Costa County LAFCO is composed of two members of city councils, two county supervisors, two special district members chosen by their constituencies, and one public member chosen by the other members (see Gov. Code, section 56325). Members are appointed for four-year terms and can be reappointed. Commission members exercise independent judgment on behalf of the interests of residents, property owners, and the public as a whole. Any member appointed on behalf of local governments represents the interests of the public as a whole and not solely the interests of the appointing authority. In other words, commission members are expected to look beyond their particular constituency, focusing on the general public good within the County.

Based on a review of relevant authorizing legislation, existing LAFCO policies and procedures, Grand Jury reports and responses, and LAFCO actions taken, the Contra Costa County Civil Grand Jury recommends that the Contra Costa County LAFCO adopt a more assertive position utilizing its “watchdog” responsibilities. Further, the Grand Jury recommends that LAFCO develop policies and procedures permissible under the mandate given to it, to hold local agencies accountable in the multiple areas noted and not only take appropriate action to rectify discrepancies identified but to do so in a much more expeditious fashion than has been the case in the past.

METHODOLOGY

In preparing this report, the Contra Costa County Civil Grand Jury:

- Reviewed legislation relevant to the creation and operation of Local Agency Formation Commissions.
- Reviewed Contra Costa County Civil Grand Jury reports over the past decade related to the Contra Costa County LAFCO and responses to them.
- Reviewed selected Contra Costa County LAFCO MSR.
- Reviewed written records for selected other LAFCOs in similar California counties.
- Interviewed selected county, city, local agency and special district staff as well as elected officials and Commission members.

BACKGROUND

Local Agency Formation Commissions (LAFCOs) were created by the California Legislature in 1963 with regulatory and planning responsibilities to coordinate the timely development of local government agencies and their services while protecting agricultural and open-space resources. Most notably, this included managing boundary lines by approving or disapproving proposals involving the formation, expansion, or dissolution of cities and special districts.

LAFCOs also conduct studies to provide data to inform members and the public about possible decisions and actions. These studies include preparing Municipal Services Reviews (MSRs) to evaluate the level and range of governmental services provided in the affected region in anticipation of establishing and updating cities and special districts' Spheres of Influence. MSRs were added to LAFCOs' mandate with the passage of the Cortese-Knox-Hertzberg Local Governments Reorganization Act of 2000. MSRs are comprehensive studies designed to better inform LAFCOs, local agencies and communities about the provision of municipal services.

MSRs attempt to capture and analyze information about the governance structures and efficiencies of service providers and to identify opportunities for greater coordination and cooperation between providers. An MSR is a prerequisite to a Sphere of Influence determination and may also lead a LAFCO to take other actions under its authority. Spheres of Influence designate the territory LAFCOs believe represent the affected agencies' appropriate future jurisdictions and service areas and must be reviewed every five years. Thus, MSRs must be completed every five years at a minimum. Contra Costa LAFCO is now preparing to begin the process of completing MSRs for all local agencies for which it is the principal LAFCO.

Government Code section 56430, (subdivision (a)) provides that the Commission shall, after completion and review of a local agency, "prepare a written statement of its determination with respect to each of the following:

1. Growth and population projections for the affected area.
2. The location and characteristics of any disadvantaged unincorporated communities within

or contiguous to the sphere of influence.

3. Present and planned capacity of public facilities, adequacy of public services, and infrastructure needs or deficiencies including needs or deficiencies related to sewers, municipal and industrial water, and structural fire protection in any disadvantaged, unincorporated communities within or contiguous to the sphere of influence.
4. Financial ability of agencies to provide services.
5. Status of, and opportunities for, shared facilities.
6. Accountability for community service needs, including government structure and operational efficiencies.
7. Any other matter related to effective or efficient service delivery, as required by commission policy.”

Section 56430 goes on to say that the Commission “may assess various alternatives or services for improving efficiency and affordability of infrastructure within and contiguous to the sphere of influence, including, but not limited to, the consolidation of governmental agencies.” (Gov. Code, section 56430(b))

As of July 1, 1994, LAFCOs have the authority to initiate proposals that include the dissolution or consolidation of special districts or the merging of existing subsidiary districts. Prior to initiating such an action, LAFCOs must determine that the district’s customers would benefit from the proposal through adoption of a sphere of influence or other special study.

Contra Costa County LAFCO’s membership consists of two City Council members, two County Supervisors, two Special District members, and one Public member (Gov. Code, section 56325). Members are appointed by their respective constituencies, except for the Public member who is selected by the other Commission members. The Government Code also provides that all commission members “shall exercise their independent judgment on behalf of the interests of residents, property owners, and the public as a whole”. (Gov. Code, section 56325.1) “Any member appointed on behalf of local governments shall represent the interests of the public as a whole and not solely the interests of the appointing authority.” (Gov. Code, section 56325.1).

Each County in the State of California has a LAFCO as provided for by the Cortese-Knox-Hertzberg Local Governments Reorganization Act of 2000 (Gov. Code, section 56000 et seq.). A comprehensive list of local agencies for which the Contra Costa LAFCO is the principal LAFCO is shown as Appendix 1 for this report.

LAFCOs in general and the Contra Costa LAFCO in particular have a long history stretching back 50 years and had their role expanded over the years. As noted above, one significant expansion occurred in 1994 when LAFCOs were given authority to initiate proposals for the consolidation or dissolution of special districts, and another took place in 2000 when the state legislature added the requirement that MSR be conducted.

The Contra Costa LAFCO was evidently somewhat slow implementing the MSR program. The

2001-2002 Contra Costa Civil Grand Jury issued Report No. 0209 titled “Narrow Focus of Contra Costa County Local Agency Formation Commission.” In it the Grand Jury chided the local LAFCO for failing to initiate MSR’s as provided for in the Local Government Reorganization Act of 2000, waiting instead for guidelines from the State Office of Planning and Research. This was the case despite LAFCO’s recognition that as many as six revenue-producing special districts might have been in need of dissolution (November, 2001 LAFCO meeting minutes). In addition, some special districts (e.g. Contra Costa County Flood Control and Water Conservation District and the Resource Conservation District) had overlapping missions and responsibilities and duplicated one another’s services. The report also pointed out that there continued to be three health care districts in Contra Costa County that no longer owned or operated the hospitals they had been established to oversee. A number of recommendations were made, one of which encouraged LAFCO to initiate studies, and another asked it to initiate proposals for the dissolution or consolidation of special districts that were redundant, duplicated services or whose functions were no longer necessary. The 2001-2002 Grand Jury recommended that LAFCO exercise authority which it clearly had.

In fact, there is substantial historical evidence that the local LAFCO needed to be encouraged to address local agency deficiencies. The 2002-2003 Contra Costa Civil Grand Jury issued Report No. 0309 titled “Where Have All The Hospitals Gone?” In the report, the Jury questioned the continued existence of Mt. Diablo Health Care District, Los Medanos Community Healthcare District, and West County Health Care District since the community hospitals that the districts once owned and operated were now overseen by others. Although the Healthcare Districts had lost their original responsibilities, they remained in existence at taxpayer expense. The 2007-2008 Contra Costa Civil Grand Jury, in Report No. 0806 (“Should the Mt. Diablo Health Care District Be Dissolved?”), recommended that the District be dissolved and submit a plan for same to LAFCO as part of its 2007 MSR. The District’s response was that the recommendation was neither warranted nor reasonable. On August 8, 2012, for all intents and purposes a decade after the issue was first raised, action was taken by LAFCO to reorganize the Mt. Diablo Health Care District.

The 2009-2010 Contra Costa Civil Grand Jury issued Report No. 1009 (“‘Lost’ Medanos Community Health Care District”) in which it recommended this district be dissolved for much the same reasons it had for Mt. Diablo Healthcare District. The District’s response to this recommendation was to “maintain the status quo” and LAFCO concurred, saying the recommendation would be implemented during the next LAFCO Municipal Services Review of Public Healthcare Services in 2012-2013.

The Grand Jury has also raised questions about the continuation of Rollingwood-Wilart Park Recreation and Park District. In its 2012 report, “ROLLINGWOOD-WILART PARK RECREATION AND PARK DISTRICT, Who’s Minding the Store?”, the Jury recommended the District be dissolved given its inability to generate community interest in Board membership, its inability to generate facility rentals, and its failure to adequately perform basic management activities. Discussions are now pending with the City of San Pablo regarding the possibility of a reorganization/annexation of the Rollingwood community to the City.

To its credit, the Contra Costa County LAFCO has completed numerous MSR’s and updated a multitude of SOIs since May 10, 2006, when the Town of Discovery Bay Community Services

District SOI and MSR were adopted. But as the Grand Jury learned, collecting and processing information without drawing the necessary (and authorized) conclusions from it leaves a significant gap with regard to exercising necessary authority.

The point of view was expressed several times to the Grand Jury that LAFCO's authority to force action is limited. Although it can reduce a district's SOI to 0 to get attention, it cannot tell a district how to conduct its business. But clearly, as shown in Section 56430 quoted above, it can collect and publicize data on a variety of elements, including agency financial capacity, opportunities for shared facilities, accountability for community service needs, and **“any other matter related to effective or efficient service delivery, as required by commission policy.”** (emphasis added, Gov. Code, section 56430 (a) (7)) As several interviewees said, legislation dictates policies as enumerated above, but individual LAFCOs determine how to accomplish them.

Several of those interviewed likened LAFCO to the Civil Grand Jury. The Grand Jury cannot force an action, it can only study, collect, assess and recommend. But by persistence, follow-up, and publicity, much can be achieved, and LAFCO could do much more.

FINDINGS

1. Policy is set by the California State Legislature, but the implementation process is up to the local LAFCO. Policies to implement state mandates are a matter of local jurisdiction.
2. LAFCOs' authority to enforce its recommendations is limited, although it can take action using SOI as a tool for disciplining wayward local agencies. LAFCO has not realized the full potential of its ability to educate and influence the public.
3. LAFCO members can speak out individually and publicly, and, except for the Public Representative, are appointed by constituencies to which they can return with concerns.
4. Instances exist, some quoted above, which represent failures on LAFCO's part to take actions that were recommended by the Grand Jury, or which took lengthy amounts of time to be brought to closure.
5. Should it choose to do so, LAFCO can become more assertive under existing state law, by following up more rapidly on concerns raised by its studies or those conducted by other agencies.
6. Given the existing five-year MSR cycle, LAFCO is simply unable to respond immediately or nimbly to issues within local agencies as they arise. The five-year MSR cycle also precludes timely follow up and monitoring with regard to concerns raised during reviews.
7. Conducting all MSRs on an equal basis and all at once every five years means that local agencies with potentially severe ongoing or new significant problems may not get a timely and in-depth review.

RECOMMENDATIONS

The Grand Jury recommends that:

1. The Contra Costa County LAFCO become much more proactive in its review and evaluation of agencies within its purview, pursuant to Government Code section 56430.
2. LAFCO assess performance of its agencies beginning with their mission statements, but also determining whether or not they have in place measurable goals for service delivery, fiscal sustainability, and other Section 56430 elements related to successful performance. Without these goals performance cannot be accurately measured.
3. LAFCO develop a staggered MSR process which would spread the workload more evenly and give LAFCO a more solid foundation permitting more in-depth MSRs targeting, in particular, those local agencies which have demonstrated the need for greater and more frequent review.
4. LAFCO do much more than it currently does with regard to reviewing and commenting on local agency budgets, particularly for those agencies that lack a fiscal oversight entity.
5. LAFCO institute a program of regularly reviewing local agency annual financial statements, auditor reports and other key regulatory documents or reports including annual updates on performance so that highlighted indicators are regularly tracked and evaluated rather than during the five-year cycle.
6. LAFCO propose corrections for the deficiencies found with regard to the elements noted in Section 56430, with specific time lines for correcting them.
7. The time lines for deficiency corrections be structured in such a way as to encourage regular and frequent reports, particularly for those agencies with egregious deficiencies.
8. LAFCO provide to each agency governing board a full report of the results of its review including proposed improvements, and these reports, as well as follow-up evaluations and reports, are made available to the agency's constituency.

REQUIRED RESPONSES

Findings

Local Agency Formation Commission Nos. 1-7.

Recommendations

Local Agency Formation Commission Nos. 1-8

APPENDIX 1

Contra Costa County LAFCO Directory of Local Agencies (for which Contra Costa is the Principal LAFCO)

County of Contra Costa

Cities and Towns

- City of Antioch
- City of Brentwood
- City of Clayton
- City of Concord
- Town of Danville
- City of El Cerrito
- City of Hercules
- City of Lafayette
- City of Martinez
- Town of Moraga
- City of Oakley
- City of Orinda
- City of Pinole
- City of Pittsburg
- City of Pleasant Hill
- City of Richmond
- City of San Pablo
- City of San Ramon
- City of Walnut Creek

Cemetery Districts

- Alamo-Lafayette Cemetery District
- Byron-Brentwood-Knightsen Union Cemetery District

Community Service Districts

- Crockett Community Service District
- Diablo Community Service District
- Town of Discovery Bay Community Service District
- Kensington Police Protection and Community Services District
- Knightsen Town Community Services District

County Service Areas

- County Service Area D-2
- County Service Area EM-1
- County Service Area L-100
- County Service Area LIB-2
- County Service Area LIB-10
- County Service Area LIB-12
- County Service Area LIB-13
- County Service Area M-1
- County Service Area M-16
- County Service Area M-17
- County Service Area M-20
- County Service Area M-23
- County Service Area M-28
- County Service Area M-29
- County Service Area M-30
- County Service Area M-31
- County Service Area P-2
- County Service Area P-5
- County Service Area P-6
- County Service Area R-4
- County Service Area R-7
- County Service Area R-9
- County Service Area R-10
- County Service Area RD-4
- County Service Area T-1

Fire Protection Districts

- Contra Costa County Fire Protection District
- Crockett-Carquinez Fire Protection District
- East Contra Costa Fire Protection District
- Kensington Fire Protection District
- Moraga-Orinda Fire Protection District
- Rodeo-Hercules Fire Protection District
- San Ramon Valley Fire Protection District

Health Care Districts

- Los Medanos Community Healthcare District
- Mt. Diablo Healthcare District
- West Contra Costa Healthcare District

Irrigation Districts

- East Contra Costa Irrigation District

Mosquito and Vector Control Districts

- Contra Costa Mosquito and Vector Control District

Municipal Improvement Districts

- Bethel Island Municipal Improvement District

Reclamation Districts

- Reclamation District 799
- Reclamation District 800
- Reclamation District 830
- Reclamation District 2024
- Reclamation District 2025
- Reclamation District 2026
- Reclamation District 2059
- Reclamation District 2065
- Reclamation District 2090
- Reclamation District 2117
- Reclamation District 2121
- Reclamation District 2122
- Reclamation District 2137

Parks and Recreation Districts

- Ambrose Parks and Recreation District

- Green Valley Recreation and Park District
- Pleasant Hill Recreation and Park District
- Rollingwood-Wilart Recreation and Park District

Resource Conservation Districts

- Contra Costa Resource Conservation District

Sanitary Districts

- Byron Sanitary District
- Central Costa County Sanitary District
- County Sanitation District 6
- Delta Diablo Sanitation District
- Ironhouse Sanitary District
- Mt. View Sanitary District
- Rodeo Sanitary District
- Sege Sanitary District
- West County Wastewater District

Water Districts

- Contra Costa Water District
- Diablo Water District