

## LAFCO REVISITED - 2003

Local Agency Formation Commissions (LAFCOs) were created in each county by the Cortese-Knox Local Government Reform Act of 1963, charged with encouraging orderly and efficient local governmental agencies, discouraging urban sprawl, and preserving prime agricultural land through controlling the boundaries of most cities and special districts. They were invested with the power and duty to review and approve or disapprove: city incorporations, creation of special districts, annexation of territory to cities and special districts, and to define a Sphere of Influence (SOI) -- or ultimate growth boundary -- for every city and special district.

Subsequent amendments added control over the formation, merger and dissolution of most special districts, and power to approve disincorporations and merger of municipalities. Later legislation permitted them to initiate actions, not just respond to proposals.

To carry out this charge, LAFCOs must adopt a Sphere of Influence (SOI) or ultimate growth boundary for every city and special district. Using standards for evaluation, commissions review and make final decisions on proposed boundaries and whole jurisdictions by approving formation, or requiring enlargement, detachment, dissolution, consolidation, merger, or reorganization.

LAFCOs have regulatory and planning powers. While they may not make direct land use decisions, when they approve or deny boundary changes to cities and special districts that do have land use authority and provide services for development, they make indirect land use decisions.

In 1995 the League of Women Voters of the Bay Area (LWVBA) observed that some LAFCOs were making decisions affecting growth and development and open space protection within their own counties without regard to critical impacts on their neighboring counties or the region as a whole. And these decisions were being made almost invisibly -- without the light of public scrutiny or public input in the process. Our 1995 survey and subsequent update in 1997\* further found that many of these decisions, rather than being based upon standards for evaluation were often vulnerable to influential development interests and city and county needs for revenues, and were being made without coordination with countywide comprehensive planning.

**The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (AB2838)** inspired the League to take another look at LAFCOs.

Enactment of Assembly Bill 2838 marked the most significant reform to local government reorganization law since the 1963 statute that created Local Agency Formation Commissions (LAFCOs). Based on recommendations in "*Growth within Bounds*," the report of the Commission on Local Governance for the 21<sup>st</sup> Century, AB 2838, The Knox-Cortese-Hertzberg Local Government Reorganization Act of 2000:

1. streamlines and clarifies LAFCO policies and procedures. Requires all LAFCOs to adopt written policies and procedures, consistent with state guidelines.
2. makes LAFCOs neutral, independent, and balanced in representation for counties, cities and special districts. Requires a uniform membership selection scheme, an independent executive officer and counsel; applies conflict of interest laws to commissioners and staffs; requires a hearing on the need for lobbying disclosure regulations. Where counties previously were responsible for funding, all three categories now share operating costs equally. There are special formulas for counties which contain a major city (Santa Clara County in the Bay Area) and for the City and County of San Francisco.
3. strengthens LAFCO powers to prevent sprawl and ensure the orderly extension of government services. Requires routine updating of spheres of influence and
4. municipal service reviews at least every five years according to guidelines established by the state Office of Planning and Research, to determine local agency needs and adequacy. Defines "prime agricultural lands" more precisely and requires LAFCO, in evaluating proposed reorganizations, to consider existing data on timely availability of water supplies, the extent to which the proposal will help achieve the jurisdiction's fair share of regional housing needs as determined by ABAG; and allows, but does not require, consideration of regional growth goals and policies adopted by the local council of governments (ABAG). (New requirements are underlined.)

5. enhances communication, coordination, and procedures of LAFCOs and local governments. Strengthens notification, coordination and boundary setting procedures between local governments and school districts and for multi-county service reviews.
6. (6) enhances opportunities for public involvement, active participation, and information regarding government decision making. Requires LAFCO to post information on a web site and expands public and government notification requirements. Requires reporting of campaign contributions and expenditures.

AB 2838 was enacted in 2000, with an effective start date of January 1, 2001 and numerous deadlines over the ensuing five years.

From March to June 2003, armed with a set of questions focused on those changes that are most relevant to LWVBA's positions on comprehensive regional planning and housing goals, intergovernmental coordination, and public information and participation, League members interviewed LAFCO Executive Officers in all nine Bay Area counties.

LWVBA wishes to acknowledge the following Local League interviewers who provided the information from this report and the LAFCO Executive Officers whose willing cooperation has made possible a better understanding of how Bay Area LAFCOs are meeting the challenges of the Cortese-Knox-Hertzberg Act.

LAFCO	INTERVIEWER	EXECUTIVE OFFICER	DATE
Alameda	Pat Mann, LWVLAV.	LouAnn Texeira.	April 2003
Contra Costa	Paul Kilkenny, LWVDV Yvonne Koshland, LWVDV	Annamaria Perella	March 2003
Marin	Donna Bjorn, LWVMC	Peter Banning	May 2003
Napa	Yvonne Koshland, LWVBA	Daniel Schwarz	May 2003
San Francisco	Yvonne Koshland, LWVBA	Gloria Young	May 2003
San Mateo	Linda Craig, LWVSSMC	Martha Poyatos	April 2003
Santa Clara	Libby Lucas, LWVLAMV Sally Probst, LWVPA	Neelima Palacheria	April 2003
Solano	Dorothy Hawkes, LWVSOLC	Shaun Pritchard	June 2003
Sonoma	Robert Hawthorne, LWVSONC	Steve Sharpe Carole Cooper, Asst. EO	May 2003

The following report summarizes and comments on the responses and closes with conclusions and recommendations for League action.

\*LAFCOs - CMAs: *Hidden Government (1996)*, a report and 1997-update insert, by LWVBA.

## QUESTIONS, ANSWERS, COMMENTS

Abbreviations and acronyms used throughout this report:

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 is referred to as AB 2838 or the Act. Local Agency Formation Commission - LAFCO or the Commission.

Sphere of Influence, the ultimate growth boundary - SOI

Municipal Service Review - MSR or service review

"Reorganization" or "change of organization" includes city incorporations, disincorporations and consolidations; formation, dissolution, merger and consolidations of most districts; and annexations to and detachments from cities and special districts.

### A. STRUCTURE/BUDGET/POLICIES AND PROCEDURES

LAFCOs are now an independent body, with a budget shared equally among the three

appointment categories: the county, cities and special districts (or two categories where special districts are not represented on the Commission).

**Policies and Procedures are to be reviewed and revised to reflect the more clearly defined responsibilities in the Act to:**

- discourage urban sprawl;
- encourage orderly formation and development of local agencies;
- preserve open space and agricultural land;
- provide housing for persons and families of all incomes (assisting local governments in meeting their regional housing needs allocations; and
- promoting efficient provision of government services.

**Revised, adopted policies are to be available to local agencies and the public in written form**

**LAFCOs are required to examine, in a public hearing, their policies and procedures concerning disclosure of contributions and lobbying.**

**Independence**

Prior to AB 2838, only Contra Costa and Marin County LAFCOs appointed an independent Executive Officer. Alameda, Napa, San Mateo, Santa Clara, Solano and Sonoma LAFCOs' executives were county staff members. The City and County of San Francisco did not have a LAFCO. By law, LAFCOs were funded by the counties with the balance of their budgets made up by fees. Since AB 2838 came into effect on January 1, 2001, An independent executive officer and an independent legal counsel have been appointed by each of the nine Bay Area County LAFCOs (the City and County of San Francisco has established a LAFCO). Commissions in Alameda, San Francisco and San Mateo contract for the services of county employees.

**Structure**

Except for San Francisco and Santa Clara Counties, all LAFCOs have two members from the Board of Supervisors and two members from the city councils in their counties. Special Districts have two representatives on the LAFCO in Alameda, Contra Costa, Marin, San Mateo and Sonoma Counties. In Napa, Santa Clara and Solano Counties, special districts have not requested representation on the Commission. By special legislation, Santa Clara County LAFCO has two members of the Board of Supervisors, one council member from the City of San Jose, and one city council member representing the other 14 cities. San Francisco - as a City and County and the sole local agency -- seats three supervisors and two public members on the Commission. The appointed members of each LAFCO select a representative of the general public, who is not seated on any elected body and is not a resident of a city whose elected official is an appointed LAFCO Commissioner. In each category of representation there is an alternate member who may attend meetings and participate in the discussion of items, but may only vote on items when a regular member from his or her category is absent.

**Budgets**

In Alameda, Contra Costa, Marin, San Mateo and Sonoma LAFCOs the budget is shared equally among the three categories of representation: the county, the cities, and the special districts. In Napa and Solano, the county and the cities share equally. In Santa Clara the allocation formula is: 50% - the county; 25% - the City of San Jose; 25% - apportioned among the remaining 14 cities on the basis of their total revenue as a percentage of the combined city revenues within the county. San Francisco is responsible for the whole budget. Sonoma County is currently considering reducing the special district share to 20%, with the county's and cities' shares increasing to 40%.

In general, in the first two years after AB 2838 became effective, budgets increased to cover costs previously absorbed by the counties and additional costs arising from the Act's requirements. Contra Costa has long maintained a status quo budget; San Francisco has no basis for comparison. Only Marin and Solano Counties had

not raised fees as of mid-2002. San Francisco does not have fees. Most of the recently adopted budgets for 2004 reflect the stressed economy and are lower.

### **Policies/Procedures**

Except for Contra Costa LAFCO, all counties have revisited and adopted revised policies to reflect more clearly defined requirements of CKH. Contra Costa LAFCO Executive, Annamaria Perella believes its long-standing policies cover the requirements. Solano County LAFCO's policies do not address the housing requirement although the Commission has been involved in facilitating housing for military families based at Travis Air Force Base. The Napa County Executive notes that AB 2838 does not give LAFCO additional powers and he does not believe the Act gives clear direction with respect to the provision of housing

### **Disclosure**

All LAFCOs held hearings, as required, on adoption of procedures concerning contributions and lobbying disclosures. San Francisco and Sonoma LAFCOs adopted procedures regarding contributions after AB 2838. The others found that existing procedures, following the Political Reform Act, were consistent with the Act. San Francisco, Santa Clara and Sonoma added new rules on lobbying disclosure, the others did not. In most cases the Commissions did not feel that this was an issue. Some include a disclosure item at the beginning of each agenda (Contra Costa, San Mateo). Others make disclosure a part of the LAFCO application (Sonoma). In Napa, Commissioners submit Statements of Economic Interest to LAFCO.

## **B. MUNICIPAL SERVICE REVIEWS/SPHERE OF INFLUENCE UPDATES**

**A major new responsibility for LAFCOs is the preparation of Municipal Service Reviews (MSR) before or in conjunction with Sphere of Influence (SOI) updates which must take place at least every five years.** The purpose of these reviews of the cities and special districts under LAFCO jurisdiction is to determine local government service needs and adequacy and make recommendations for improvement where appropriate. As part of its review of municipal services, LAFCO is required to prepare a written statement of its determinations with respect to each of the following:

1. Infrastructure need or deficiencies;
2. Growth and population projections for the affected area;
3. Financing constraints and opportunities;
4. Cost avoidance opportunities;
5. Opportunities for rate restructuring;
6. Opportunities for shared facilities;
7. Governmental structure options, including advantages and disadvantages of consolidation or reorganization of service providers;
8. Evaluation of management efficiencies; and
9. Local accountability and governance.

**Given the large number of cities and special districts in each county to be reviewed in a five- year period, LAFCOs must establish a work program and schedule that combines agencies in some fashion -- countywide by function, -- by sub-county geographic area, -- by single city or agency that provides a broad range of services; and establish priorities for undertaking the reviews.**

### **Numbers**

The charts below show the number of cities and special districts (independent and dependent) that fall under each LAFCO's jurisdiction and the multi-county special districts in each, indicating the county with principal responsibility.

#### **NUMBER OF LOCAL AGENCIES IN LAFCO JURISDICTION**

LAFCO	CITIES	INDEP. SD*	DEP. SD	TOTAL SD.	MULTI
ALAMEDA	14	15	28	43	3
CONTRA COSTA	19	43	50	93	4
MARIN	11	3	18	21	
NAPA	5	8	9	17	1
SAN FRANCISCO	1				
SAN MATEO	20	25	38	63	2
SANTA CLARA	15	26	4	30	4
SOLANO	7	36	11	47	1
SONOMA	9	45	13	58	2
TOTAL	102	201	171	372	NA

#### MULTI-COUNTY SPECIAL DISTRICTS

LAFCOs	MULTI-COUNTY DISTRICT	PRINCIPAL
ALA/CC	DUBLIN-SAN RAMON SERVICES DISTRICT	ALAMEDA
	EAST BAY MUNICIPAL UTILITY DISTRICT	ALAMEDA
	EAST BAY REGIONAL PARK DISTRICT	ALAMEDA
CC/SAN JOAQUIN	BYRON-BETHANY IRRIGATION DISTRICT	CONTRA COSTA
MARIN/SONOMA	MARIN-SONOMA MOSQUITO ABATEMENT DIST.	SONOMA
NAPA/SOLANO	NAPA COUNTY RESOURCE CONSERVATION DIST.	NAPA
SAN MATEO/SANTA CLARA	MID-PENINSULA REGIONAL OPEN SPACE DIST.	SAN MATEO
	WEST BAY SANITARY DISTRICT	SAN MATEO
SANTA CLARA/SAN BENITO	PACHECO PASS STORM WATER DISTRICT	SANTA CLARA
	PACHECO PASS WATER DISTRICT	SANTA CLARA
SONOMA/MENDOCINO	COAST LIFE SUPPORT DISTRICT	SONOMA

\* The government code defines "Independent Special District" to include any special district having a legislative body all of whose members are elected by registered voters or landowners within the district, or whose members are appointed to fixed terms, and excludes any special district having a legislative body consisting, in whole or in part, of ex officio members who are officers of a county or another local agency or who are appointees of these officers other than those who are appointed to fixed terms.

#### Schedule/Priorities

Approaches to setting up a five-year schedule and assigning priorities for completion of the service reviews by January 1, 2006 vary.

#### ALAMEDA

The work program starts with data collection: a survey questionnaire sent to each local agency and further research from other local, regional and state resources to compile a matrix. The matrix will be reviewed with the status of SOI updates, followed by grouping of services according to priorities: public safety (police and fire) and water and wastewater prior to others, such as parks and street maintenance. At interview time (April 2003), data gathering was still underway.

## CONTRA COSTA

Data collection from cities, special districts and other countywide and regional resources was underway at time of interview (March 2003). Cities are scheduled for SOI updates in 2003- 2004; special districts in 2004-2005. Reviews will be coordinated with SOI updates. The Commission is discussing a minimal approach to the service reviews, setting priorities as they emerge in the SOI updates. Discussion on the reorganization of healthcare districts as, possibly, the first service review has begun at the direction of the County Grand Jury.

## MARIN

Priorities are determined by perceived urgency of emerging issues and frequency of boundary change proposals. The process is underway and the Municipal Service Review for the City of Novato has been completed.

## NAPA

LAFCO has adopted a schedule for Municipal Service Reviews and Sphere of Influence updates beginning in late 2001 and ending in late 2005. Some studies are designed to conduct analysis of one kind of service across many agencies; others focus on the breadth of services offered by one agency. When the adopted schedule is completed the Commission will evaluate the need for further studies and develop a schedule for the 2006-2010 cycle. Currently underway and scheduled for completion this summer and fall, respectively, are reviews of the City of American Canyon and the Comprehensive Water Services Study. Drafts are available on the website.

**SAN FRANCISCO** The City and County of San Francisco is a single entity with no special districts. The City's General Plan is its Sphere of Influence. AB 2838 provides that LAFCO must review and update each SOI at least every five years and conduct Municipal Service Reviews before updating SOIs. The Act also gives LAFCOs the authority to conduct special studies of municipal services at its discretion. On January 31, 2003, LAFCO passed a "Resolution Finding Deadlines for Sphere of Influence (SOI)/Municipal Service Review Updates not Applicable and Finding Authority for Service Reviews Under Future Work Plan." Pursuant to this finding, LAFCO has been carrying out its Future Work Plan for studies on effectiveness of existing city services, on alternative technologies for the delivery of services: energy, water quality and supply, and alternative delivery structures: community aggregation, public vs. private ownership.

**SAN MATEO LAFCO** will do service reviews for all agencies providing services in a geographic area. Meetings with local agencies have been held to educate them about the process and request their assistance in gathering data. Questionnaires will go to affected agencies in geographic areas according to the review schedule:

Phase 1. Countywide and regional districts and south county	2002-2003
Phase 2. Central	2003-2004
Phase 3. North	2004-2005
Phase 4. Coastside and West of Skyline	2005-2006

## SANTA CLARA

LAFCO has combined cities and special districts in four geographic areas: North, South, West Valley and Central, with a countywide approach for Fire Protection and Water Services. The Fire Protection Services study is under way, with drafts available on the website in October. The countywide water services study is next.

**SOLANO** City Municipal Service Reviews are due by December 2004; the special districts by the end of 2006. Special districts are grouped by service types- - first priorities: water services and fire protection - 2003-2004; sanitation, drainage, county service areas, vector control - 2004-2005; Recreation and park, resource conservation - 2005-2006. Solano County has 11 County Service Areas for the purposes of lighting and drainage. A proposal is under discussion to dissolve the lighting CSAs and create a county-wide lighting district.

## SONOMA

Priorities are based on potential for and impact on growth: water and wastewater/sanitation services first, then fire protection. Other services not in priorities will be reviewed every three years. The Municipal Service Review for the City of Rohnert Park has been completed.

This most demanding new requirement of AB 2838 finds the Bay Area LAFCOs in mid 2003 in varying stages of implementation. Alameda, Contra Costa and San Mateo LAFCOs, with many cities and special districts, are still in the data gathering stage. Marin (City of Novato) and Sonoma (City of Rohnert Park) have each completed one review. Napa LAFCO, with two underway (Comprehensive Study of American Canyon and Comprehensive Water Services Study) and Santa Clara with one (Countywide Fire Protection Services), expect completion this year.

### **C. INTERGOVERNMENTAL COORDINATION, INCREASED COMMUNICATIONS, PUBLIC PARTICIPATION**

**Of particular interest to LWVBA is how LAFCOs are implementing new requirements and recommendations for interfacing with local and regional comprehensive planning goals. Under the Act, coordination with local and regional planning was to be enhanced.**

#### **Local Interaction**

LAFCO interests and requirements were communicated to city and county general plan development or plan amendment processes as follows:

At the beginning: Alameda, Napa, Sonoma. Santa Clara LAFCO thought it might be a good idea. In preparation of environmental documents: All LAFCO's provide input on LAFCO interests and requirements to environmental documents for city and county general plan amendment processes. When referred to LAFCO before adoption: All LAFCOs provide comment on general plans and general plan amendments when referred before local adoption.

#### **Regional Agency Interaction--Growth Management**

Five regional agencies, the Association of Bay Area Governments (ABAG), the Bay Conservation and Development Commission (BCDC), the Bay Area Air Quality Management District (BAAQMD), the Metropolitan Transportation Commission (MTC), and the Regional Water Quality Control Board (RWQCB), recently completed a regional vision of areas to develop and conserve. Except for Alameda County, which was a co-sponsor and active participant in the Regional Agencies' Smart Growth Strategy and the Bay Area Alliance for Sustainable Communities- Regional Livability Footprint Project, interaction has been limited. Napa and Solano participated in workshops in their counties and provide feedback on request, but are not always in agreement with the process. Sonoma found that the philosophy of the smart growth process coincides with what LAFCOs do. Santa Clara and Marin are aware of the process but there is no official interaction. Contra Costa LAFCO sends its agendas to ABAG but had not been involved in the regional program, and San Mateo reported no interaction.

#### **Regional Housing Needs Assistance**

AB 2838 adds to factors to be reviewed in a reorganization proposal: the extent to which the proposal will assist the receiving entity in achieving its fair share of the regional housing needs. Regarding assistance to cities and counties in achieving the region's housing needs as determined in ABAG's Regional Housing Needs program, LAFCO Executives responded as follows:

ALAMEDA considers the local agency's housing needs determination in every application.

CONTRA COSTA maintains contact with ABAG's housing program, sends its agendas inviting comments, and includes comments in the record. In reviewing annexation proposals. In reviewing DEIRs for annexation proposals for CC County cities, the Commission cites requirements in AB 2838.

MARIN tracks Housing Needs numbers and uses them in research for Municipal Service Reviews to develop population numbers for each city and district to establish service demands.

NAPA has been involved in setting the numbers because ABAG includes Spheres of Influence in the formula for the regional housing needs numbers and participates on the Napa County League of Cities committee on housing issues.

SAN FRANCISCO is alerted to housing issues through the City Planning Department

SAN MATEO was not involved by ABAG in determining these numbers. Cities and the county Are primarily responsible for addressing these needs.

SANTA CLARA does not do much about housing. Future policies will apply to achieving fair share housing needs.

SOLANO worked extensively with county and the cities regarding ABAG's housing allocation for unincorporated areas. A county general plan policy, adopted by initiative a number of year sago, requires urban uses to be within city limits. LAFCO mediated a "fair share" agreement with cities to share the county's housing allocation.

Annexation requests must comply with the agreement.

SONOMA's role is to assure that agencies' proposals comply with their certified Housing Elements.

Several LAFCO Executive officers question whether The Act gives them any additional powers or requires interaction with ABAG. Legislation has been introduced to clarify LAFCO's role vis-à-vis the Housing Needs numbers prepared by regional councils of government throughout the State.

### **Public Awareness and Participation**

All Bay Area LAFCOs have established websites, as required in the law. Some provide only minimal information at this time. Some provide only minimal information -- mission statement, commission rosters, meeting notices and agendas. More sophisticated sites offer minutes and some or all of the following: staff reports, policies and procedures, profiles of cities and special districts, and forms to download. In general, the public appears to be more aware of the Commission and accessing some information on the website. But in the absence of "hot button" issues (in Alameda - City of Alameda Health Care District and the Castro Valley Incorporation proposal; in Solano County - prime agricultural land, open space, transportation) meetings are attended only by persons and agencies affected by a particular application.

AB 2838 requires public participation in the Municipal Service Review process; public hearings on draft documents and final adoption are to take place in a public forum.

### **D. CURRENT PROJECTS**

#### **Agricultural and Open Space Protection/Urban Uses within Cities.**

LAFCOs were asked whether they had current proposals that enabled them to exercise more clearly defined powers - (a) for guiding development away from existing prime agricultural land and valuable open space resources and (b) for encouraging development of existing vacant or non-prime agricultural land for urban uses within the existing jurisdiction of a local agency or its Sphere of Influence before approving a proposal that would allow for or lead to non-open space uses that are outside of the existing jurisdiction or SOI.

Except for San Francisco, all LAFCOs have already had policies in place covering such proposals. In addition each LAFCO honors regulations concerning agricultural land and open space protection and location of urban uses of other local and multicounty agencies with jurisdiction within their county. For example, park and open space districts, county General Plan policies on Urban Growth Boundaries or Urban Limit Lines, Local Coastal Programs, ballot measure-enacted land use controls (Contra Costa, San Mateo, Solano), Agricultural Preserves.

#### **Recent Examples.**

Santa Clara LAFCO has before it the City of Gilroy Draft General Plan Amendment of its 20-year boundary to include 664 acres of unincorporated land, which acreage is prime agricultural land within the Santa Clara County Agricultural Preserve. LAFCO reviewed the Gilroy General Plan Draft EIR and commented on the General Plan changes, communicating to the Gilroy Council LAFCO's three guiding policies to discourage conversion of prime agricultural lands.

In Solano County, a recent proposal from Benicia was to annex 20 acres for a church site. The land had an open space designation in the county general plan. An agreement was reached for the church to use only 8 acres (as presented in their plan) and to deed back 12 acres to the city to be retained in permanent open space.

## **Availability of Adequate Water Supply**

In reviewing reorganization proposals, AB 2838 requires LAFCO to review the timely availability of adequate water supplies. Adequate water supply is an issue with most LAFCOs. Alameda, Contra Costa, and San Mateo LAFCOs cite the usefulness of recent legislation (SB 610) which requires "will serve" statements from water supply agencies for subdivisions in excess of 500 units. Napa and Santa Clara LAFCOs have comprehensive water services reviews under way to improve their ability to evaluate proposals with respect to water supply. San Francisco is holding hearings on Desalinization and Recycled Water/Ground Water. Marin and Solano LAFCOs report that the Marin Water District and the Solano Water Project, respectively, provide adequate water.

## **Annexation of Unincorporated Islands**

LAFCOs active in encouraging annexation of unincorporated islands include:

Alameda, with major islands in Hayward, Livermore and Pleasanton; Contra Costa; Napa - in the City of Napa; and Solano. Santa Clara County has had a strong planning program for the past five years that provides incentives by increasing county requirements to match city requirements so there is no advantage to remaining unincorporated (unincorporated strips are currently being cleaned up in Mountain View, Sunnyvale, and Santa Clara); In San Mateo county all straightforward island annexations have been completed; those remaining have complex issues.

For Marin LAFCO, island annexations are a low priority. San Francisco - not applicable.

## **School District Interaction**

Except in counties where school districts' interest in unincorporated agricultural property (Napa) have prompted recent LAFCO efforts to improve interaction with schools, most LAFCOs have not paid much attention to this issue, with all the other more immediate requirements and deadlines of AB 2838. Most refer to the fact that LAFCOs have no jurisdiction over school districts. Some follow The Act's requirements in regard to notification of action on local proposals affecting school attendance, with little expectation of response. San Mateo LAFCO has a notice on its application form that the Reorganization Committee of the County Superintendent of Schools must be contacted regarding any annexation proposal.

## **Other Current Issues**

CONTRA COSTA - LAFCO has a directive from the Grand Jury to consider health care issues involving Los Medanos Healthcare District and Mount Diablo Healthcare District. New proposals are pending for an Oakley Reclamation District and a Knightsen Flood Control District.

SAN FRANCISCO - Since August 2002, LAFCO has conducted hearings on a number of studies that were prepared in conjunction with various other city departments, including: Energy Services, Renewable Tidal Energy (the Board of Supervisors subsequently approved a pilot project), Desalinization, Recycled Water and Ground Water, Solar Power and Energy Conservation, Energy Conservation and Wind Energy, and Community Aggregation. The City and County of San Francisco is currently considering submitting a Community Aggregation application to the California Public Utilities Commission under AB 117 (Migden), that would permit acquisition of PGE property in order to sell power at lower rates (possibly in conjunction with other cities). This would require creation of a new agency (or it could be the SF Public Utilities Commission).

SAN MATEO - The San Mateo County Mosquito Abatement District plans to apply to expand its boundaries to include the entire county in order to address West Nile Disease. It may be necessary for the district to raise additional money by assessment or parcel tax because the County and affected cities may be unwilling to give up the existing tax for this purpose. Currently there is an annexation process underway for the MidPeninsula Regional Open Space District to annex the Coastside south of Highway 92 to the District. LAFCO has been vested jurisdiction on the application, with the environmental review scheduled for adoption in June. Santa Clara will hold a hearing. Then San Mateo LAFCO will decide on the annexation. No tax assessment is proposed for

the area to be annexed; the expanded service level will be supported by the tax rate on the existing territory. An election is held if there is a protest of 25% of the property owners (which is expected in this case).

SONOMA - A current study is for consolidation of several special districts in the West County. Separate districts now provide water, sewer, fire, lighting, and park services in the area. These could be combined in a single Community Services District.

## **CONCLUSIONS AND RECOMMENDATIONS FOR LEAGUE ACTION**

### **Progress in the Municipal Services Review Process is Slow and Local Agencies Hesitate to Initiate Changes of Organization**

Midway through the third year of implementation of the new and/or clarified requirements of AB 2838, LAFCOs find themselves largely preoccupied with meeting the deadlines of the Municipal Service Review process. And only a handful of the nearly 400 service reviews that are due by January 1, 2006, have been completed.

Executive officers report that cities and special districts are cooperating in the process and comment on the many opportunities to influence land use decisions to be derived from the process, while local agencies in other parts of the state are applying political pressure to have the MSR requirement eliminated. In the Bay Area it is the Commissions, themselves, in several counties, who are still uncertain about how strong a role they wish to assume -- how intensive the reviews should be -- how far the Commission should go in implementing any determinations calling for reorganization. In addition, a number of factors impinge on Commissions' deliberations. Grand juries issue directives -- some concerning a specific district or districts, others -- on the grouping and scheduling of reviews. Decisions are delayed as lawsuits wind their way through the courts.

LAFCOs have had the authority to initiate changes of organization for many years. Partly due to lack of funds for the requisite studies and partly due to political pressure from cities and districts, most LAFCO's have chosen to act only when proposals for change are submitted to them for review by local agencies, rather than to take the initiative.

Most LAFCOs take the position stated in the Solano County's *City Municipal Service Review and Comprehensive Annexation Guidelines*: "The municipal service review process does not require LAFCO to initiate changes of organization based on service reviews; it only requires that LAFCO make determinations regarding the provision of public services per the requirements of AB 2838. However, LAFCO, local agencies, and the public may subsequently use the determinations to pursue changes to services, local jurisdictions, or spheres of influence. Service Reviews are intended to provide a broad analysis of service provision. In addition, Service reviews must be completed in order to update agency Sphere of Influence boundaries."

According to the Napa Executive Officer, the Act does not seem to offer true expansion of powers -- guidelines are permissive for extension of services to previously unserved areas and require only consideration of regional housing needs determinations and consideration of regional smart growth programs. If some county were to set a precedent by acting boldly in these areas, other LAFCOs may be emboldened to assume a stronger role.

### **Housing Responsibility is Too Undefined**

AB 2838 includes "providing housing for persons and families of all incomes" as one of the basic purposes of the Act, along with discouraging urban sprawl and encouraging orderly formation and development of local agencies, preservation of open space and agricultural lands, and effective provision of government services. It calls on LAFCOs to consider existing data on regional housing needs in reviewing annexation proposals to determine the extent to which the proposal will assist the receiving entity in achieving its fair share of the regional housing needs as determined by the appropriate regional council of governments -- in this case, the Association of Bay Area Governments (ABAG).

From the LAFCO responses, with a few exceptions, it is clear that little attention is paid to fair housing issues. In fact, their mission statements which can be seen on their websites do not include any reference to providing housing for persons and families of all incomes. For most LAFCOs, interaction with ABAG's Housing Needs Program is minimal. Many comment that ABAG does not involve them. One says that it is the responsibility of the county and cities. On the other hand, Solano County offers a good example of how a LAFCO can bring local and regional interests together in negotiating a "fair share" agreement with the county and the cities regarding ABAG's housing allocation for unincorporated areas, consistent with a county requirement that urban uses be within city limits.

One Executive Officer states that the Act does not give clear direction to LAFCOs with respect to the provision of housing. It makes an unclear reference to the process for making regional housing needs determinations and permits a LAFCO to consider regionally adopted housing policy. Anticipated amendments in State law will better define LAFCO role, whether making it stronger or weaker remains to be seen.

### **Intergovernmental Coordination Has Not Yet Blossomed**

In its *LAFCO Municipal Service Review Guidelines*: the Governor's Office of Planning and Research discusses the benefits of LAFCO involvement in local and regional planning programs:

"While LAFCO does not have any direct land use authority, the Act assigns LAFCOs a prominent role in regional planning issues by charging it to consider a wide range of land use and growth factors when it acts on matters under its jurisdiction. LAFCO has broad statutory responsibility to consider planned, orderly, efficient patterns of urban development which also preserve agricultural lands and achieve a fair share of the region's housing needs.

"LAFCOs can have a powerful influence on local land use planning decisions through participation in city and county general plan processes. State planning law requires cities and counties to refer their general plans to LAFCO before adopting or amending their general plans.

"This is an example of many opportunities that LAFCO has to influence local and regional land use decisions in ways that are consistent with LAFCO's charge. On one hand, LAFCO must consider consistency with local general plans when it makes boundary decisions, but LAFCO also has the ability to influence the nature of those local general plans through active participation in their development.

"Regional planning initiatives are another opportunity for LAFCO to collaborate with planning agencies and encourage development of coordinated goals and policies. . . .

"Service reviews occur in the larger context of county and regional planning efforts that are not always in harmony. LAFCO should use every opportunity to engage in these other planning efforts to ensure that LAFCO's concerns are reflected in land use planning decisions. LAFCO should also take advantage of the opportunity to use its municipal service review process as a means of encouraging collaboration with regional planning agencies on important policy issues. By both participating in these other planning efforts and using information gained from these activities, LAFCO can help improve the quality and consistency of data. Service reviews should help put into context the relationship between service options and regional issues, goals and policies."

There is little evidence that LAFCOs have taken OPR's Guidelines to heart.

**Local** -- All LAFCOs report providing input to environmental documents and when general plans or plan amendments are submitted for LAFCO review before local adoption. Only a few describe involvement at the beginning of local general plan development or amendment processes, though some executive officers say it would be a good idea.

**Regional** -- A massive "Smart Growth" effort among regional agencies and the business, environmental, and human rights communities has been underway for several years in the Bay Area and has reached consensus on regional goals for growth that balance the economy, the environment and equity. ABAG has held workshops

throughout the Bay Area. Only Alameda LAFCO has been an active participant and co-sponsor of this process. Other LAFCOs are aware of the process, some have attended workshops, but none in an official capacity. Some LAFCOs report that, as in the Housing Needs Program, ABAG has not invited their participation. Once again, the Act is permissive only regarding LAFCO interaction with ABAG. LAFCOs may, but are not required to, consider ABAG's regional growth goals.

The Executive Officers of the nine Bay Area LAFCOs meet regularly to exchange ideas and experiences in their efforts to implement AB 2838. A major focus is on legislative analysis with an eye to further clarification of LAFCO's roles.

CALAFCO - the statewide organization that provides services to LAFCOs has a legislative policy that supports requiring LAFCO decisions to be consistent with state and regional goals and plans, rather than merging LAFCO functions with multi-county regional agencies.

### **School Districts**

There are changes in the Education Code in AB 2838. The bill requires each county school district's Committee on School District Reorganization to provide written notice before considering any plan for unification or other reorganization put forth in a qualified petition. The Act also requires LAFCOs to provide written notice of a proposed reorganization that may affect school attendance to the countywide school district and each school superintendent whose district would be affected. Except in Napa County where school districts' interest in unincorporated agricultural property have prompted recent LAFCO efforts to improve interaction with schools, most LAFCOs have little or no contact with school districts, claiming they have no jurisdiction. It appears that neither school districts nor LAFCOs are familiar with the sections of AB 2838 requiring this minimal interaction. Executive officers observe that there are no teeth in the law. Even with this minimal required interaction, school districts are virtually exempt from LAFCO influence.

One interviewer observed that the law also exempts transit districts whose decisions, like those of school districts, directly affect growth and land use.

### **Public information Has Hit the Web, Will Public Participation Follow?**

Websites, now established by all nine Bay Area LAFCOs, do not yet, across the board, provide full public access to LAFCO processes. Most LAFCOs report more questions than in the past, especially those that provide application forms to download, but meeting attendance in response to notices of public meetings and agendas, for the most part, still consists only of those parties affected by a particular proposal before the Commission. "Hot button" issues in Alameda and Solano Counties that have had media attention have brought increased awareness of LAFCO and attendance at meetings. This should change as Municipal Service Reviews are completed. AB 2838 requires public participation in the MSR process - hearings on the draft documents and final adoption are to take place in a public forum. These forums open the door for League action to alert the public to the opportunity to review the determinations and to urge changes of organization when LAFCOs are faint of heart.

## **LEAGUE FINDINGS SOUND A WAKEUP CALL**

Preoccupied with the details of gearing up for MSRs and reluctant to invite controversy, most Bay Area LAFCOs appear to be overlooking the opportunities to be a more dynamic influence in shaping the Bay Area's growth offered by The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. Alameda LAFCO's executive director highlighted those opportunities in her comments:

"With the enactment of AB 2838 came sweeping changes to LAFCO in terms of new structural, operational and procedural requirements and responsibilities. However, along with this came independence and many new and exciting opportunities, in particular, the sphere of influence and municipal service reviews. In general SOI/MSR reviews can be used to:

- encourage infill development and direct growth to areas planned for growth in General Plans

- learn about service issues and needs
- develop a structure for dialogue among agencies that provide services
- help plan for the provision of high quality infrastructure needed to support healthy growth
- provide tools to support regional perspectives and planning."

For Leagues in the Bay Area, AB 2838 provides the vehicle for turning the LAFCOs' focus to:

- their role in assisting local governments in achieving their regional housing needs allotments,
- the importance of being an integral part of comprehensive planning for the Bay Area's growth,
- and
- the opportunities the Municipal Service Reviews bring for LAFCOs, working together and with local and regional agencies and the public, to make substantial improvements in the efficiency of service delivery to the Bay Area's urban areas, while, at the same time, preserving the region's priceless agricultural and open space resources.

### **Action Recommendations to Local Leagues/County Councils**

Take advantage of the new openness--web sites, enhanced opportunities for public input, and the Sphere of Influence/Municipal Service Review process mandated by AB 2838--to monitor the effectiveness of your LAFCO in achieving AB 2838's goals.

1. Appoint a LAFCO Monitor for each county to follow LAFCO actions. All LAFCOs post meeting notices and agendas on their websites and all will mail them to any who request them.
2. Support more complete coverage of LAFCO decision-making on the web sites; circulate information to relevant League members including Bay Area Representatives.
3. Advocate processes and decisions that are consistent with local and regional positions on public information and participation, fair share housing needs, compact, transit-oriented urban development, and conservation of agricultural lands and open space resources.
4. Publicize LAFCO hearings on draft Municipal Service Reviews in your VOTERS; bring issues to the attention of the public and the media.

### **Action Recommendations to LWVBA**

Monitor legislative proposals to clarify the roles and specify the interactions between LAFCOs and the Regional Councils of Governments with respect to achieving regional fair housing and smart growth goals and policies. Advocate laws that support LWVBA positions.

1. Urge interaction between ABAG staff and the Bay Area LAFCO Executive Officers' Group to
2. Engage LAFCOs in regional planning and implementation of regional policies.
3. Watch for and support legislative initiatives to strengthen LAFCO-school district interaction and extend LAFCO jurisdiction to transit districts on land use issues.
4. Monitor service reviews for the major multi-county special districts such as East Bay Municipal Utility District, East Bay Regional Park District, Mid-Peninsula Regional Open Space District; comment in accord with positions in consultation with local Leagues.
5. Seek media attention for the public hearings and the public policy issues.

**Achieving the goals of State reforms depends, as usual on an alert citizenry.**