

L A F C O M E M O R A N D U M

SANTA BARBARA LOCAL AGENCY FORMATION COMMISSION

105 East Anapamu Street ♦ Santa Barbara CA 93101 ♦ (805) 568-3391 ♦ Fax (805) 647-7647

October 27, 2011

TO: Each Member of the Commission

FROM: Bob Braitman 
Executive Officer

SUBJECT: **Late Arriving Materials for November 3 Commission Meeting**

Enclosed for review prior to the November 3 meeting is the following additional correspondence received from local agencies. These pertain to agenda item 7, CALAFCO-proposed amendments to Government Code Section 56133.

- City of Lompoc (October 19, 2011)
- Carpinteria Sanitary District (October 25, 2011)
- Goleta West Sanitary District (October 26, 2011)

Please contact the LAFCO office if you have any questions.

cc: LAFCO Legal Counsel Bill Dillon
Keene Simonds, Executive Officer, Napa LAFCO



CITY OF
LOMPOC

October 19, 2011

Bob Braitman, Executive Director
Santa Barbara Local Agency Formation Commission
105 East Anapamu Street
Santa Barbara CA 93101

RE: Request for Comment

Dear Mr. Braitman

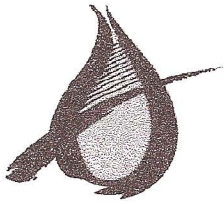
Thank you for the opportunity to review the proposed Amendments to Government Code Section 56133, regarding LAFCO's authority regarding "out of agency service agreements". The matter was considered by the Lompoc City Council at the meeting of October 18, 2011.

Based on the information provided, the City is able to express support for the proposed Amendments. We appreciate the opportunity to comment and look forward to our continued cooperative working relationship.

Sincerely,

John H. Linn
Mayor

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Carpinteria Sanitary District

5300 Sixth Street, Carpinteria, CA 93013
(805) 684-7214 • Admin Fax (805) 684-7213 • Plant Fax (805) 566-6599

October 25, 2011

Ms. Janet Wolf, Chair
Santa Barbara LAFCO
105 East Anapumu Street
Santa Barbara, CA 93101

SUBJECT: Proposed Amendments to Government Code Section 56133

Dear Commissioner Wolf:

The Carpinteria Sanitary District Board of Directors, at their regular meeting on October 4, 2011, reviewed the proposed amendments to Government Code Section 56133 that have been approved by CALAFCO and are now being considered by Santa Barbara LAFCO. Thank you for seeking our input on the proposed statutory changes.

Our basic position is that parcels requiring public sewer service from the Carpinteria Sanitary District (District) should be annexed into our jurisdictional boundary and included in our Sphere of Influence (SOI). We do not support and will not generally allow permanent service extensions outside of our service area boundary. In the District's opinion, such extensions result in disorderly boundaries and are not necessary in the first place.

Existing law allows for extensions of service outside of an agency's boundary for two specific situations. Both of these contemplate a subsequent reorganization or annexation. The proposed amendments would establish a different regulatory framework, under which a parcel would receive public utility service without any future intent to include that parcel within the boundary or SOI of the agency providing the service. In perpetuity, the owners and residents of these parcels would be excluded from voting in District elections or running for elective office. Separate legal agreements would be required to ensure that District ordinances and regulations can be applied and enforced for these customers outside of our jurisdictional boundary. Extra effort and associated costs will be incurred for mapping, accounting and record keeping for this separate category or class of customer.

You may remember that the District vehemently opposed the Santa Barbara LAFCO Policy on Extending Urban Utility Services to Agricultural Parcels. In doing so, we expressed disagreement with the idea that annexing a parcel of land to a single function special district is growth inducing or that it will foster changes in land use. We continue to maintain that land use and zoning are the responsibility of the County of Santa Barbara and local municipalities. The District is concerned that the proposed statutory amendments will enable LAFCO to promote or encourage out of agency service agreements (OASAs) for parcels with agricultural

zoning in the Carpinteria Valley in lieu of annexation. There are a great number of these parcels (primarily greenhouse/hothouse agriculture) in proximity to the District's current boundary that are likely to require public sewer service in the future. Based on existing LAFCO policy, in conjunction with the proposed government code amendments, we foresee a proliferation of OASAs in this area when, in our opinion, the parcels could simply be annexed into our service area and included in our SOI.

With respect to the specific language of the proposed amendments, there is ambiguity that we find problematic. Paragraph (c)(2)(A) requires LAFCO to determine that the extension of service or service deficiency was "identified and evaluated in a municipal service review...". It is unclear what is meant by this. Does this mean that a specific parcel or parcels will be listed in the MSR? Or do the authors intend for the MSR to include generic statements about certain categories of parcels or geographic areas requiring service at some point in time. Absent the parcel-specific identification and evaluation, it will be difficult for a utility provider to plan for its ultimate service and capacity needs. Further, in Paragraph (c)(2)(B) it is unclear what "adverse impacts on open space or agricultural lands" could be expected, and there are no criteria or directions for making such a determination.

The District is particularly concerned about the proposed statutory amendments due to the fact that our current SOI is contiguous with our jurisdictional boundary. Any new connection requires both annexation and modification of our SOI. We have requested on multiple occasions that our SOI be updated by LAFCO, through the Municipal Service Review process, so that it reasonably represents the ultimate service area for our agency. Practically, this will allow the District to engage in meaningful capital facility planning. The idea that LAFCO may authorize or promote OASAs as a means of serving parcels outside of our SOI is in conflict with our desire to know the limits of our ultimate service area boundary and our ultimate capacity requirements.

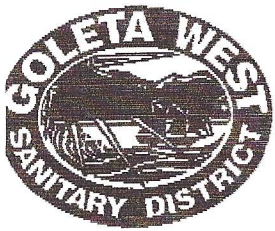
In summary, the Carpinteria Sanitary District opposes the proposed amendments to Government Code Section 56133 and we encourage LAFCO to respond in opposition to the CALAFCO Board if legislation on this matter moves forward. Thank you again for the opportunity to provide input on this important topic. Please do not hesitate to contact me with any questions relative to the District's position. I can be reached by telephone at (805) 684-7214 x12 or by email at craigm@carpsan.com.

Respectfully Submitted,
CARPINTERIA SANITARY DISTRICT



Craig Murray, P.E.
General Manager

cc: CSD Board of Directors
Mr. Bob Braitman, LAFCO Executive Officer



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October 26, 2011

BY FACSIMILE

Janet Wolf, Chair
Santa Barbara County Local Agency Formation Commission
105 East Anapamu Street
Santa Barbara, CA 93101

Re: Proposed Amendments to Government Code Section 56133

Dear Chair Wolf and Members of the Board:

Since 1954, the Goleta West Sanitary District has provided wastewater collection and treatment services to the western Goleta Valley, including Isla Vista and the City of Goleta. It also provides street sweeping and supports graffiti removal and other community maintenance services. The Goleta West boundaries are adjacent to rural parcels located in the unincorporated portion of Santa Barbara County.

The purpose of this letter is to comment on the proposed amendments to Government Code Section 56133 that were distributed to local public agencies on September 12, 2011 by your Executive Officer. We have had an opportunity to analyze those proposed amendments, and have also reviewed the comments submitted by the Goleta Water District and the Montecito Water District.

1. Expanding Use of Out-of-Agency Agreements. Goleta West **supports** the proposed language that expands the use of out-of-agency agreements. Such arrangements were commonplace in years past, and we believe that they can provide important public benefits. Thus, to the extent the proposed amendment enlarges the opportunities for districts like Goleta West to offer utility services outside their boundaries, we support the proposal. At the same time, we are troubled by some of the constraints placed on this expanded authority by the proposed legislation.

Section 56133 currently allows extraterritorial service only to address "an existing or impending threat to the public health or safety of the residents . . ." The proposed amendments would enact an expansion of the authorized purposes to include services for "existing or proposed uses involving public or private property." At the same time, this expanded authorization would be strictly limited by the language imposing a narrow and specific set of criteria, including a requirements that the service expansion or service deficiency was identified in a Municipal Services Review (MSR). Thus, before a public agency can ask LAFCO to approve a request to

provide services outside its boundaries, it will need to ensure that the applicable MSR identifies a need for that service in the affected area.

Since MSR's are typically revised every five years, this new limit could have the effect of unjustifiably delaying consideration of a reasonable and logical extraterritorial service proposal. Goleta West is concerned this MSR requirements will, as a practical matter, make it impossible for an agency to pursue an extraterritorial service arrangement. We ask that LAFCO suggest that the legislation include authorization for an MSR to be revised concurrently with a proposal for extraterritorial service. Goleta West believes that this procedure will appropriately ensure that extraterritorial service extensions are preceded by a policy-level examination of the impacts of the proposal, while avoid any unnecessary delay in processing of such extension requests.

We are also troubled by a drafting ambiguity. The proposed language allows LAFCO to approve extraterritorial service "if consistent with adopted policy." The statute does not specify whether the "policy" is a LAFCO policy, a policy of the requesting agency, or the policy of the jurisdiction in which the property is located. This language should be clarified.

2. Unintended Consequence – Environmental Review. The proposal would confer substantial discretion on LAFCO to approve or disapprove extraterritorial service proposals based on criteria typically used in land use decisions, e.g., impacts on open space and agricultural lands. Goleta West is concerned that these discretionary standards will trigger environmental review under CEQA. This could be a particular problem where no CEQA review is otherwise required, for example where the proposed land use to be served by water or sewer from a nearby district is allowed by right in the land use jurisdiction (e.g., a single family home on a farm). Goleta West believes that requiring CEQA compliance under these circumstances would impose an unnecessary and expensive burden on public agencies.

3. Environmental Impacts – A Too-Low Threshold. As noted above, the proposal's expansion of authority for extraterritorial service is constrained by a requirement that the extension of service would "not result in adverse impacts on open space or agricultural lands or result in adverse growth inducing impacts." This language is reminiscent of words that appear in the California Environmental Quality Act, but with one major difference: CEQA uses the word "significant" before "adverse impact" to ensure that *de minimus* adverse impacts do not have an unwarranted impact on public agency decision-making. Goleta West suggests that the word "significant" be inserted in the two appropriate location in the above-quoted language.

4. Expansion of Commission Power Over Interagency Agreements. The proposal adds language to the existing provision authorizing local agencies to enter into agreements for public service "swaps." The new words to be added to subsection (c) would confer on LAFCO the authority to approve such arrangements, whereas under the existing statute those arrangements are within the discretion of the two service agencies. Goleta West opposes this change on the ground that there is no identified need to expand LAFCO's authority over interagency agreements of this sort.

5. Authority to Delegate Approval Power to Executive Officer. The proposal adds language which authorizes a LAFCO to delegate approval power to its Executive Officer. This authority is

discretionary, and thus an individual LAFCO will have to decide whether – as a matter of local policy – it wishes to empower its EO in this fashion. Some commentators have suggested that such a delegation of authority is unwise. Goleta West believes that this comment misses the point: the state law leaves the decision as to whether or not this authority will be delegated to the EO up to the discretion of each local LAFCO. Goleta West believes that expanded local discretion – as opposed to a one-size-fits-all approach – is sound public policy, and therefore supports this change in the law.

At the same time, Goleta West respectfully submits that the Santa Barbara LAFCO should adopt, as a matter of local LAFCO policy, that the authority to approve or disapprove an extraterritorial service arrangement will be exercised by the full LAFCO Board. Alternatively, if the Board does decide to delegate that approval authority to the EO, we urge that the decision should be subject to appeal to the LAFCO Board of Directors. As a special district, Goleta West believes that the LAFCO Board should retain ultimate decision-making authority over extraterritorial service arrangements. We believe that such a policy could and should be adopted today.

Thank you for considering these comments.

Sincerely,


Craig Geyer
President