



North Santa Clara Resource Conservation District

An independent special district of the State of California

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Santa Clara Local Agency Formation Commission (LAFCO)
777 North First Street, Suite 410
San Jose, CA 95112

RE: Comprehensive Review and Update of LAFCO Policies

Dear LAFCO Commissioners:

North Santa Clara Resource Conservation District (NSCRCD) appreciates the opportunity to provide comments on the draft Comprehensive Review and Update of LAFCO Policies. We believe California's resource conservation districts – independent special districts that offer technical and financial assistance to agricultural producers and landowners – are valuable but underutilized assets for statewide LAFCOs in their efforts to preserve open-space and prime agricultural lands.

Our comments focus specifically on *Chapter 5. Out-of-Agency Service by Contract Policies*:

1. Section 5.1: The introductory language of this policy does not acknowledge that Government Code §56133 provides exemptions in certain circumstances. This omission is significant for accurately representing LAFCO's authorities. We recommend the following amendment to the first sentence in paragraph 3:

"To prevent such circumvention and strengthen LAFCO's position to better address issues concerning growth and sprawl, the Legislature added Government Code (GC) §56133 which requires cities and special districts to first request and receive written approval from LAFCO before providing new or extended services by contract outside their jurisdictional boundaries, subject to the exemption stated at GC §56133(e).

2. Section 5.2.4: We respectfully disagree with LAFCO's interpretation that it alone holds the authority to determine whether a proposed Out-of-Agency Service by Contract (OASC) qualifies for exemption under Government Code §56133(e). The law explicitly states, "this section does not apply to any of the following", and enumerates specific circumstances where preapproval from LAFCO is not mandated. It does not confer upon LAFCO the authority to make such determinations.

CALAFCO and individual LAFCOs initially framed this issue as one of legal interpretation, acknowledging that it would need to be resolved by legislative amendment.¹ During the 2020-21 legislative session, CALAFCO sought to amend §56133(e) to add "as determined by the commission or executive officer"², but the bill did not progress. In spite of legislative intervention being an

¹ https://www.edlafco.us/files/596b79503/20+Jan_Item+12+Staff+Memo+%28OASA+Policy%29.pdf

² <https://www.fresnolafco.org/files/89f9a2b1e/Mar2021Item+8.pdf>

apparent priority for CALAFCO for a number of years, in July 2024 their Board of Directors voted to discontinue efforts to amend §56133 related to exemption language, citing it as a burden due to opposition from certain stakeholder organizations.³

In light of ongoing resistance to legislative changes supporting CALAFCO's interpretation, various county LAFCOs are now deciding to act unilaterally, adopting local policies such as the one being considered by the Commission today, to assert LAFCO's authority to require cities and special districts to seek pre-approval for exemption status.⁴ We recognize the desire for the Commissioners to be informed about services rendered outside jurisdictional boundaries to ensure compliance with its mission, and we support efforts to promote orderly growth to preserve agricultural and open space lands. However, reliance on local interpretation of State law, particularly one that has been expressly disputed, to adopt this policy may create potential liability.

As a constructive alternative, we propose that rather than requiring pre-approval for OASC agreements, the Commission establish a policy that mandates cities and special districts to notify LAFCO of OASC agreements within 30 days of execution, similar to the current requirements for entities entering into joint powers agreements (JPAs). This approach would empower the Commissioners to address any issues of noncompliance without imposing undue burdens on compliant entities.

We recommend the following revision to replace the entirety of Section 5.2.4:

Exempt OASC Agreements: *A city or special district that enters into an OASC agreement under the authority of GC §56133(e) must file a copy of the executed agreement, along with any amendments, with LAFCO within 30 days of the agreement's effective date. LAFCO retains the right to challenge any agreement it believes does not comply with §56133(e) by referring the agreement to the Commission for consideration and potential further action.*

We appreciate the opportunity to present these comments and advocate for modifications that align with LAFCO's intent while preserving special district legal rights pursuant to Government Code 56133. We respectfully encourage you to consider this modified language in lieu of the policy language current proposed.

Sincerely,

Stephanie Moreno

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³ <https://lafco.org/wp-content/uploads/documents/september-26-2024-lafco-meeting/8.%20Legislative%20Update%20Rpt%209-26-2024.pdf>

⁴ <https://www.sdlafco.org/home/showpublisheddocument/7678/638515398658800000>