



# North Santa Clara Resource Conservation District

An independent special district of the State of California

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November 13, 2024

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 reply to LAFCO staff’s responses to our initial comments submitted on the draft *Comprehensive Review and Update of LAFCO Policies*. We continue to encourage this LAFCO and LAFCOs statewide to view and consider California’s resource conservation districts as potential collaborators in LAFCO efforts to preserve open-space and prime agricultural lands, which are goals RCDs share.

### **NSCRCD Supplementary Comments:**

LAFCO Staff Response	NSCRCD Supplementary Comments to LAFCO
<p>This issue of who should determine whether an OASC is exempt from LAFCO approval under GC §56133(e), has been a topic of discussion and legislative efforts for many years now – at CALAFCO as well as at individual LAFCOs. In February 2021, Santa Clara LAFCO took action to provide conceptual support for San Diego LAFCO’s legislative effort to clarify that it is LAFCO that determines whether an exemption applies.</p>	<p>The legislative effort to change Government Code 56133 to clarify that it is LAFCO that determines the exemption has been abandoned by CAL LAFCO because they were unable to get legislative support, and that more recent information should be taken into account by the Commission rather than relying on previously provided conceptual support for the San Diego LAFCO’s effort. This information was reported in the Riverside LAFCO Legislative Update Report dated September 26, 2024:</p> <p><i>“The CALAFCO Legislative Committee last met on June 14, 2024, as previously noted. The Committee agreed that continuing to pursue Section 56133 potential legislation for clarifying exemption language for out of area (extra territorial) extension of services was becoming a burden that might require abandonment due to roadblocks by some</i></p>

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	<p><i>stakeholder organizations. The CALAFCO Board of Directors last met on July 19, 2024, and received a status briefing on legislation of interest. Additionally, the Board voted to abandon the 56133 proposed legislation.”</i></p> <p><a href="https://lafco.org/wp-content/uploads/documents/september-26-2024-lafco-meeting/8.Legislative%20Update%20Rpt%209-26-2024.pdf">https://lafco.org/wp-content/uploads/documents/september-26-2024-lafco-meeting/8. Legislative Update Rpt 9-26-2024.pdf</a></p>
<p>In 2022, CALAFCO published a white paper on clarifying LAFCO authority to determine exemption under GC §56133(e) which states “LAFCOs maintain that the legislative intent behind the Cortese-Knox-Hertzberg Act makes it clear that the final determination of whether a service contract is exempt from a LAFCO process is a function for the LAFCO – not the contracting entities.”</p>	<p>AB 1335 (Gotch, 1993) appears to have created the 56133 exemption by an amendment to the Cortese-Knox Local Government Reorganization Act of 1985. The bill analysis – which names CAL LAFCO as the source –explicitly states with regards to the requirement to obtain LAFCO approval:</p> <p><i>“This requirement does not apply to contracts and agreements between and among public agencies.”</i></p> <p><a href="http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_1301-1350/ab_1335_cfa_930830_171827_sen_floor">www.leginfo.ca.gov/pub/93-94/bill/asm/ab_1301-1350/ab_1335_cfa_930830_171827_sen_floor</a></p>
<p>The CKH Act is silent as to who makes the decision on a GC §56133(e) exemption. It is Santa Clara LAFCO Counsel’s opinion that LAFCO has the authority to adopt a policy to make the determination whether an OASC proposal is exempt from LAFCO approval under GC §56133(e). LAFCO is best equipped and most knowledgeable to make the decision on these exemptions that are limited to avoid growth inducing impacts. By LAFCO making the decision, there is consistency in the interpretation, and it provides transparency and uniformity in the decision-making process and in the determination.</p>	<p>We disagree individual LAFCOs have unilateral authority to read additional requirements into the statute that are not found in the plain text.</p> <p>Further evidence that the legislature did not intend for LAFCO to have approval authority can be found in the Assembly Committee on Local Government’s analysis of AB 402 (Dodd, 2015), which states:</p> <p><i>“AB 1335, however, recognized the need to accommodate unexpected local conditions and several exemptions were established. <b>LAFCO approval is not required for contracts or agreements solely involving two or more public agencies</b> [emphasis added] where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the exiting service provider.</i></p> <p><a href="http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0401-">http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0401-</a></p>

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	<a href="http://0450/ab_402_cfa_20150521_170336_asm_floor.html">0450/ab_402_cfa_20150521_170336_asm_floor.html</a>
<p>Because state law is silent and absent a legislative proposal to date, to provide clarity, many LAFCOs (including Orange, LA, San Diego, San Bernadino, Sacramento, Mendocino) have adopted local policies to clarify that LAFCO, and not the agency providing the service, makes the exemption determination.</p>	<p>This adoption of local policies is contrary to the following policy statement contained within the Senate bill analysis for AB 1335 (Gotch, 1993) – again the named source is CAL LAFCO:</p> <p><i>“For each of the last four or five years, LAFCOs have reacted to several bills by legislators who were upset at the way some commissions carry out the Cortese-Knox Act. Recognizing Sacramento’s frustration, LAFCOs want the Legislature to spell out clear policies for them to follow. They want to apply these new statutory policies consistently.”</i></p> <p><a href="http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_1301-1350/ab_1335_cfa_930830_171827_sen_floor">www.leginfo.ca.gov/pub/93-94/bill/asm/ab_1301-1350/ab_1335_cfa_930830_171827_sen_floor</a></p>
<p>The proposed Policy #5.2.4 is not new – it is for the most part existing Santa Clara LAFCO practice that we are documenting for transparency and adding a provision that allows appeal of staff decision to the full commission at no cost to the agency.</p> <p>This policy makes it explicit that LAFCO decides exemption eligibility and provides for a proactive, transparent process that would help avoid subsequent conflicts, delays, financial or service impacts for affected parties.</p>	<p>The proposed Commission policy <u>is</u> new. If a staff practice existed, which is not supported by evidence in the record, it was not previously noticed to cities and special districts. Rather, it appears LAFCO’s policy was to not weigh in on these agreements, as stated in the agenda for the June 3, 2015 Santa Clara LAFCO Commission stated the following under Item 8.4 in response to a question LAFCO received from our special district as to the policy:</p> <p><i>“Executive Officer Palacherla informed Ms. Moreno that based on the information provided, <b>LAFCO approval would not be required because pursuant to State law, contracts between two public agencies (SCVWD and GCRCD, in this case) are exempt from LAFCO approval</b> [emphasis added] where the identified services were previously provided in the area by a public provider. In this case, the service was previously provided by the SCVWD in the area.</i></p> <p><a href="https://santaclaralafco.org/sites/default/files/meetings/agendas/LAFCO_2015_06_03_June_Agenda.pdf">https://santaclaralafco.org/sites/default/files/meetings/agendas/LAFCO_2015_06_03_June_Agenda.pdf</a></p>
<p>Given LAFCO’s authority over local agency boundaries and service extensions, it is logical for LAFCOs to be the single body to make these exemptions under a uniform process taking into account the public interest of avoiding growth</p>	<p>In its initial comment letter, NSCRCD recognized the desire for the Commissioners to be informed about services rendered outside jurisdictional boundaries to ensure compliance with its mission, and heard concern expressed by the</p>

LAFCO Staff Response	NSCRCD Supplementary Comments to LAFCO
<p>inducing impacts – rather than individual agencies making such decisions in their own interest, without a uniform process.</p>	<p>Commissioners that not every jurisdiction is complying with the law. We believe our proposed revision to the language would address those stated issues of noncompliance without imposing undue burdens on the other compliant entities. It will also help the Commission avoid potential liability that it may incur if it were to adopt a policy requirement not authorized by its enabling authorities, as was apparently adopted as policy by a number of LAFCOs, but which resulted in a Court of Appeal ruling that there was no statutory authority to impose an indemnity agreement.</p> <p><a href="https://alcl.assembly.ca.gov/system/files/2024-06/sb-1209-cortese_0.pdf">https://alcl.assembly.ca.gov/system/files/2024-06/sb-1209-cortese_0.pdf</a></p>

**Proposed Amendment:**

We again recommend compromise language for the Commission to consider by amending Section 5.2.4 to read:

***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.*

**Summary**

We sincerely appreciate the opportunity to present our supplementary comments and advocate for modifications that align with LAFCO’s intent while preserving special district legal rights pursuant to Government Code 56133. As relayed in our previous oral and written comments, and reiterated again in these public comments, we believe the proposed policy is not in conformance with LAFCO’s enabling authorities. We ask that the Commission review and consider our comments, citations, and proposed amendments in the collaborative spirit in which they are offered, and take action to amend the draft policy as presented.

Sincerely,

*Stephanie Moreno*

Stephanie Moreno  
 Executive Director  
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Attached: NSCRCD First Comment Letter, dated October 2, 2024



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October 2, 2024

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.<sup>1</sup> During the 2020-21 legislative session, CALAFCO sought to amend §56133(e) to add "as determined by the commission or executive officer"<sup>2</sup>, but the bill did not progress. In spite of legislative intervention being an

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<sup>1</sup> [https://www.edlafco.us/files/596b79503/20+Jan\\_Item+12+Staff+Memo+%28OASA+Policy%29.pdf](https://www.edlafco.us/files/596b79503/20+Jan_Item+12+Staff+Memo+%28OASA+Policy%29.pdf)

<sup>2</sup> <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.<sup>3</sup>

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.<sup>4</sup> 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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Executive Director  
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<sup>3</sup> <https://lafco.org/wp-content/uploads/documents/september-26-2024-lafco-meeting/8.%20Legislative%20Update%20Rpt%209-26-2024.pdf>

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