

DRAFT

September 2, 2009

The Honorable Judge Paul Marigonda
Santa Cruz Superior Court
701 Ocean Street
Santa Cruz, CA 95060

Subject: LAFCO Response to 2008-9 Grand Jury Final Report

Dear Judge Marigonda:

At its meeting of September 2, 2009, the Local Agency Formation Commission of Santa Cruz County discussed the Grand Jury's 2008-9 Final Report, and authorized the following detailed responses. Prior to drafting its response, LAFCO solicited and received input from many special districts in the County. In summary, LAFCO has implemented the Grand Jury's recommendations concerning LAFCO being a repository for special district bylaws, parliamentary procedures, and mission statements. Also, in preparing the next round of service reviews as mandated by Government Code Section 56430, LAFCO will ask the special districts to provide access to their adopted governance documents either on their website or by filing a paper copy with LAFCO.

As explained in the detailed responses, LAFCO has decided not to implement the Grand Jury recommendations that LAFCO require and enforce the requirement that all special districts adopt and file bylaws and other governance documents with LAFCO. Such enforcement is not within LAFCO's primary mission and constrained budget.

LAFCO agrees with the Grand Jury's thesis that every special district should take care to conduct the public's business in a transparent process that includes public participation in board decisions. LAFCO thanks the members of the Grand Jury for their public service and their preparation of the 2008-9 Final Report.

Very truly yours,

Roger W. Anderson
Chairperson

Attachment

Responses of Santa Cruz LAFCO to the 2008-9 Grand Jury Final Report

Finding 1

1. LAFCO Policies, Page 43
2. LAFCO Response Date: September 2, 2009
3. Grand Jury Finding:
 - a. Each county LAFCO operates independently and may adopt local policies. [LAFCO 101].
4. LAFCO Response: AGREES

Finding 2

1. Special district accountability, Page 43
2. LAFCO Response Date: September 2, 2009
3. Grand Jury Finding
 - a. LAFCO, through Municipal Service and Sphere-of-Influence reviews, may hold special districts accountable for meeting community service needs, including governmental structure and operational efficiencies. [Government Code 56439(a)(5)].
4. LAFCO Response: PARTIALLY AGREES. There is no Government Code Section 56439(a)(5). Government Code Section 56430 requires LAFCO, when preparing the five-year service reviews, to make determinations regarding the services being provided to the various communities in the county. One determination subject is:
“(5) Accountability for community service needs, including governmental structure and operational efficiencies.”

Finding 3

1. State law regarding district bylaws, Page 43
2. LAFCO Response Date: September 2, 2009
3. Grand Jury Finding:
 - a. From the inception of special districts, they were required to operate by “rules,” often redefined as bylaws or rules of proceedings as in (Kehoe) Government Code 61045(f).
4. LAFCO Response: LAFCO PARTIALLY DISAGREES. Government Code Section 61045(f) is located in the Community Service District law and states: “(f) The board of directors shall adopt rules or bylaws for its proceedings.” This section of the law applies only to Community Service Districts formed under Government Code Section 61000 et seq. There are no such districts in Santa Cruz County. As pointed out in the comments LAFCO has received from some of the districts in Santa Cruz County, the enabling acts for other types of districts (such as fire protection districts and county water districts) do not contain a similar requirement.

Finding 4

1. Brown Act, Page 43
2. LAFCO Response Date: September 2, 2009
3. Grand Jury Finding:
 - a. All special districts fall under the mandate of the Ralph M. Brown Act, adopted in 1953 [Government Code 54950 to 54962], which requires agencies to have open meetings.
4. LAFCO Response: AGREES

Finding 6

1. Bylaws submittal to LAFCO, Page 43
2. LAFCO Response Date: September 2, 2009
3. Grand Jury Finding:
 - a. Santa Cruz County special districts have never been required to submit bylaws, parliamentary procedures and mission statements to LAFCO.
4. LAFCO Response: AGREES

Finding 7

1. LAFCO files, Page 43
2. LAFCO Response Date: September 2, 2009
3. Grand Jury Finding:
 - a. LAFCO special district files in Santa Cruz County contain very few, if any, copies of bylaws, parliamentary procedures or mission statements.
4. LAFCO Response: AGREES.
LAFCO also notes that, in reviewing the Grand Jury's report, several special districts have provided LAFCO with website references and paper copies of their bylaws, parliamentary procedures, and mission statements.

Finding 8

1. Bylaws oversight, Page 43
2. LAFCO Response Date: September 2, 2009
3. Grand Jury Finding:
 - a. In Santa Cruz County no governmental agency has provided special district oversight to ensure existence of and operation within bylaws and parliamentary procedures.
4. LAFCO Response: AGREES

Recommendation 1

1. Who is Watching Our Special Districts?, Page 44
2. LAFCO Response September 2, 2009
3. Grand Jury Recommendation:
 - a. Santa Cruz LAFCO commissioners should require that a mission statement accompany the initial application for formation of a special district.

4. Implementation:
 - a. LAFCO's response is that this recommendation will not be implemented. Consistent with applicable law, LAFCO currently has extensive application requirements for any party proposing the formation of a new district. These requirements include a purpose, a budget, and an operating plan. A LAFCO application requirement that a mission statement be included in the application would be duplicative. A district, if it is formed, may decide whether the adoption of a mission statement would be a helpful management tool.

Recommendation 2

1. Who is Watching Our Special Districts?, Page 44
2. LAFCO Response Date: September 2, 2009
3. Grand Jury Recommendation:
 - a. Santa Cruz LAFCO commissioners should require bylaws and parliamentary procedures be adopted, presented to and permanently lodged with LAFCO within 90 days of formation of a new district.
4. Implementation:
 - a. LAFCO's response is that this recommendation has not been implemented and that it may exceed LAFCO's legal authority under state law. LAFCO notes that any new district will be subject to any of the other Grand Jury recommendations that LAFCO implements for all districts.

Recommendation 3

1. Who is Watching Our Special Districts?, Page 44
2. LAFCO Response Date: September 2, 2009
3. Grand Jury Recommendation
 - a. Santa Cruz LAFCO commissioners should require all existing special districts to have bylaws and parliamentary procedures and to submit copies for LAFCO's files within six months.
4. Implementation
 - a. LAFCO's response is that this recommendation will not be implemented and that it may exceed LAFCO's authority under state law and may conflict with the enabling statutes for various special districts. If legal support existed for such a requirement, LAFCO would not choose to implement it because LAFCO believes that the decision to adopt bylaws and parliamentary procedures should be made by each district board, and that LAFCO should not prioritize its limited staff time in an effort to enforce special districts to adopt bylaws and parliamentary procedures.

Recommendation 4

1. Who is Watching Our Special Districts?, Page 44
2. LAFCO Response Date: September 2, 2009
3. Grand Jury Recommendation:
 - a. The Santa Cruz LAFCO office should act as a central repository and maintain copies of each special district's bylaws, parliamentary procedures and, if applicable, mission statement.
4. Implementation
 - a. Santa Cruz LAFCO has implemented this recommendation in following manner:
 - The "Links" page of LAFCO's website has been expanded to include notations for the special districts that don't maintain websites. Only five independent districts do not have any website:
 - Alba Recreation and Park District
 - Central Water District
 - Opal Cliffs Recreation and Park District
 - Pajaro Valley Public Cemetery District
 - Salsipuedes Sanitary District.
 - Santa Cruz LAFCO has opened a paper file that will be the permanent repository of all district bylaws, parliamentary procedures, and mission statements that districts submit in paper format.
 - Santa Cruz LAFCO has added a notation on the "Links" page of its website that the paper versions of special district bylaws, parliamentary procedures, and mission statements that have been submitted to LAFCO may be accessed at the LAFCO office.
 - In the next round of service reviews, LAFCO will inquire of each special district if they have bylaws, parliamentary procedures, and mission statements. LAFCO will ask if the documents are available on the district's website, and will invite districts that don't make the documents available on their website to file paper copies at the LAFCO office.

Recommendation 5

1. Who is Watching Our Special Districts?, Page 44
2. LAFCO Response Date: September 2, 2009
3. Grand Jury Recommendation:
 - a. The public should have access during normal County business hours or by electronic media to LAFCO copies of special district governing documents.
4. Implementation:
 - a. LAFCO has implemented this recommendation.

Recommendation 6

1. Who is Watching Our Special Districts?, Page 44
2. LAFCO Response Date: September 2, 2009
3. Grand Jury Recommendation
 - a. The LAFCO commissioners and/or the County Board of Supervisors should draft enforceable penalties for failure to comply with these recommendations, following adoption.
4. Implementation
 - a. LAFCO will not implement this recommendation because:
 - It may not be legal under state law.
 - LAFCO has major pending applications to review and significant state mandates to comply with. LAFCO must use its limited resources to provide thorough reviews and public hearings on applications, and to meet the state mandates
 - The public and the Grand Jury should deal directly with any district they believe is failing to provide adequate transparency in conducting the public's business.