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Growth Within Bounds: A discussion of the recent changes to the laws governing Local Agency Formation Commissions (LAFCOs)

By Michael Patrick Durkee, Karen Donovan,** and Melanie Tang****

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I. INTRODUCTION

Growth concerns and debates over governance are not new to California. Laws regulating city annexations and boundary changes have been on the books since the nineteenth century. Not surprisingly, the focus on these laws has heightened each time the state has experienced a period of rapid growth and urbanization.¹ Before the Great Depression, California's population more than doubled in a twenty year period, led largely by the growth of Los Angeles County and the entertainment industry. Following World War II, the population of California again grew dramatically, with a corresponding boom in housing construction and the rapid conversion of agricultural lands from farm and ranch uses to suburban development. Beginning in the 1990s, a new population boom started, spurred in part by rapid growth in the high tech industry.

With each growth spurt, demand for government services has increased, as has the criticism that poor planning resulted in inefficient delivery of these public services. In the late 1990s, faced with California's latest growth spurt, and a series of voter-adopted initiatives that diminished the independence of local governments and constrained their ability to raise funds, state officials again began focusing on local agency boundaries and the effects of rapid growth. The result was a 16-month reexamination of the policies, practices, and statutes affecting the organization and boundaries of California's local agencies.

This article examines that process and the statutory changes that resulted from it. The article begins with a brief history of the development of Local Agency Formation Commissions (LAFCOs) and the events that led up to the formation of the Commission on Local Governance for the 21st Century, the body charged in 1997 with comprehensively examining LAFCO policies and procedures and the laws that govern local agency organizations and reorganizations. The article then discusses the suggestions received by the 21st Century Commission in hearings held throughout the state, the Commission's final recommendations, and the statutory changes that were ultimately adopted based on these recommendations. Through this discussion, the practitioner will be better armed to interpret what the new law does or does not change.

II. A BRIEF HISTORY OF LAFCOS

In large part, LAFCOs trace their history to the growing concerns in the 1950s regarding uneven government services, loss of open space lands, and pollution. In the post-World War II boom, cities battled one another to claim desirable undeveloped land for residential development. Special district popularity also mushroomed because these districts could be formed quickly and expanded easily and thus fit well with the low-density suburban lifestyle that was beginning to characterize California. Many felt that calculated manipulation of city annexation boundaries and special district service areas were encouraging leapfrog develop-

ment and sprawl.² Seeking to address this, in 1951, the Legislature created county boundary commissions to review the accuracy of proposed city annexations.³

In 1959, Governor Edmund G. Brown, Sr. appointed the Commission on Metropolitan Area Problems to study the developing problems and make recommendations on the use of land resources in California and the problem of overlapping local governmental jurisdiction.⁴ To provide a planning function extending over entire areas, that commission recommended the establishment of a State Metropolitan Areas Commission to be appointed by the Governor to exercise quasi-judicial powers in the review and approval of proposals for incorporation of cities, annexations to cities, and creation, consolidation, and dissolution of special districts. The commission also recommended that the State Metropolitan Areas Commission have the power to initiate and submit for voter approval proposals for consolidation of cities and to identify and delineate multi-purpose districts on the basis of specified criteria.

The State Metropolitan Areas Commission was opposed by the counties, which proposed their own individual annexation commissions in each county. In 1963, adopting a compromise negotiated between the Governor and cities and counties, the Legislature replaced the existing County Boundary Commission with Local Agency Formation Commissions (LAFCOs) in all counties except San Francisco.⁵

As independent quasi-legislative agencies operating within each county, LAFCOs were created to deal with issues relating to annexations and urban sprawl in a comprehensive and balanced manner.⁶ Intended to be supra-local agencies, LAFCOs would intervene in local boundary decisions and contribute to the logical and reasonable development of local government in the counties.⁷ The 1963 Act set forth LAFCO's purposes, which included the discouragement of urban sprawl and the encouragement of local growth, with the goals of protecting open space and promoting infill added later.

Until 1986, LAFCOs exercised their authority over annexations, incorporations, and creation of special districts through three separate state laws: the 1963 Knox-Nisbet Act, the 1977 Municipal Organization Act (MORGA), and the 1965 District Reorganization Act.⁸ These three laws were combined in 1985 to form the Cortese-Knox Local Government Reorganization Act (Cortese-Knox Act).⁹ LAFCOs have the authority to prepare and adopt "spheres of influence" as long-range boundary plans for cities.¹⁰ LAFCOs were also given the authority to approve or disapprove local agency "changes of organization," including proposed detachments, annexations, disincorporations, dissolutions, formations, incorporations, and reorganizations.¹¹ LAFCOs must base their decisions on a consideration of a list of statutorily prescribed factors; however, the Cortese-Knox Act allows LAFCOs to supplement these statutory factors with their own standards and local policies.¹²

III. THE COMMISSION ON LOCAL GOVERNANCE FOR THE 21ST CENTURY

In 1997, recognizing that almost 35 years had passed since the Legislature established the Commission on Metropolitan Area Problems, and noting the need for a new assessment of the LAFCO laws in the face of another wave of growth and significant changes to city and county abilities to raise revenues, the Legislature created the Commission on Local Governance¹³ for the 21st Century ("21st Century Commission"). Like the Metropolitan Areas Commission that preceded it, the newly created 21st Century Commission was given the broad charge of examining growth and local boundaries in California. Citing sustained interest in incorporating new cities, resistance to city annexations, problems in financing local agency facilities and services, and proposals to detach territory from existing cities, the Legislature directed the 21st Century Commission to reevaluate the statutory policies and procedures that guided California's communities for nearly 35 years. Specifically, the 21st Century Commission was mandated to review current statutes regarding policies, criteria, procedures and precedents for city, county and special district boundary changes, to solicit the views and advice of the public, to propose criteria to increase citizen and community participation in city, county, and special district governments, and to recommend any appropriate statutory changes.¹⁴

From August, 1998 to January, 2000, the 21st Century Commission held 25 days of public hearings, during which it heard from over 160 organizations and individuals on a diverse array of issues.¹⁵ The participants in these hearings included members of LAFCOs, local government representatives, special district representatives, planners, members of community groups, and citizens. On January 20, 2000, the 21st Century Commission released its final report, *Growth Within Bounds*. The report contains a comprehensive discussion of many of the growth-related challenges facing California in the future, as well as specific recommendations for amending the Cortese-Knox Act.

After the release of *Growth Within Bounds*, the 21st Century Commission's recommendations were incorporated into Assembly Bill 2838. In September 2000, the Governor approved AB 2838. The bill provides comprehensive revisions to the Cortese-Knox Local Government Reorganization Act of 1985 (now known as the Cortese-Knox-Hertzberg Act of 2000). In devising the final changes, the Legislature addressed many recommendations of the 21st Century Commission, although several significant suggestions were absent from the final legislation.

In its final form, the legislative product omitted much of the 21st Century Commission's recommendations for handling growth issues on a regional, less parochial basis. In both this latest overhaul and past revisions to the LAFCO laws over the years, the Legislature has repeatedly noted that LAFCOs are essentially the only body existing at an intermediate level between the state and individual local governments with the power to address broad future planning concerns. Nonetheless, at the same time, the Legislature has repeatedly denied LAFCOs a direct role in regulating land use and property development. LAFCOs are charged with the broad policy mandate to preserve open space, discourage sprawl, and ensure orderly development. To do this, however, they have only the statutorily provided authority to review and approve incorporations and annexations, spheres of influence, and extensions of service beyond existing boundaries. The question of whether LAFCOs should be involved in the larger, more discretionary acts of local land

use planning, and if so, what the nature of that involvement should be, remains a contested issue. Not surprisingly, in its latest effort to examine the LAFCO laws and processes comprehensively, the 21st Century Commission heard several suggestions for broad changes intended to increase LAFCO involvement and oversight in land use decision-making. In the end, however, both the 21st Century Commission and the Legislature limited LAFCOs to their present role. The report and legislation that resulted from it have established several significant reforms that will enable LAFCOs to implement their existing role more credibly. Nonetheless, LAFCOs alone cannot prevent sprawl, preserve agricultural and open space lands, or even ensure the provision of services in an efficient and orderly manner. Thus, the recommendations of the Commission on Local Governance for the 21st Century and the AB 2838 legislation that resulted from them improved a structure and system of governance that has changed little since the 19th century. The discussion that follows describes those improvements.

IV. THE RECOMMENDATIONS AND THE FINAL LAW

A. Legislative Intent and LAFCO Policies

The 21st Century Commission heard a number of comments and recommendations on the existing policies and legislative intent that a LAFCO must consider when approving a proposal. Yet, in the end, the 21st Century Commission rejected any sweeping changes to the existing expressions of legislative intent. The Legislature added language to the general legislative intent section to clarify the basic policies of LAFCOs in a single section. In the opening section, which previously declared the Legislature's recognition that the logical determination of local agency boundaries is an important factor in promoting orderly development, AB 2838 added language that recognized the importance of "balancing such development with sometimes competing state interests of discouraging urban sprawl, preserving open space and prime agricultural lands, and efficiently extending governmental services."¹⁶

Other additions addressed the need for affordable housing by stating: "providing housing for persons and families of all incomes is an important factor in promoting orderly development."¹⁷ In addition, AB 2838 declares a "preference" for "accommodating additional growth within, or through the expansion of, the boundaries of those local agencies which can best accommodate and provide necessary governmental services and housing for persons and families of all incomes in the most efficient manner feasible."¹⁸

Acknowledging the fact that special districts are sometimes the most efficient and cost-effective providers of service in an area, a section was added to the statute recognizing that although a single multi-purpose agency "may be" the best mechanism for providing community services, the law also recognizes "the critical role of many limited purpose agencies, especially in rural communities."¹⁹ A final change states that regardless of whether a single agency or multiple agencies are proposed, "responsibility should be given to the agency or agencies that can best provide governmental services."²⁰

As recommended by the 21st Century Commission, AB 2838 also added a separate section that specifically sets forth the legislative intent with regard to each LAFCO's powers and duties. Previously, this section listed the purposes of a LAFCO as discouraging sprawl and encouraging orderly formation and development of local agencies based on local conditions and cir-

instances.²¹ AB 2838 also added language regarding “preserving open space and prime agricultural lands [and] efficiently providing government services.”²²

While the revisions to the legislative intent language are significant, it is unclear what the practical effect of the revisions will be. Potentially, when the legislative intent addresses an issue directly or, at one point, the revisions could be important in evaluating whether a LAFCO has acted consistently with the drafters’ intent. More generally, it appears that while the legislative intent section is an amplification and consolidation of the Legislature’s intent and policy interests, this section also confirms the limited jurisdictional status of LAFCOs insofar as issues such as affordable housing and preferences for single or multiple-purpose districts are addressed only in the legislative intent section, and they were not added to any of the statute’s substantive requirements.

B. Independence and Funding of LAFCOs

The 21st Century Committee process demonstrated that the debate over the structure and independence of LAFCOs that started in 1960 has not abated. Although the 21st Century Commission did not suggest any changes to the basic LAFCO structure and member selection procedures, it did recommend language encouraging an expansion of all LAFCOs to include special district members. The Legislature adopted this recommendation, and the new law requires LAFCOs to initiate proceedings for independent special district representation if requested. The new law also makes selection of the public member subject to the affirmative vote of at least one of the representatives of each of the three appointing authorities—the city, the county, and special districts.

Many comments weighed in on the subject of LAFCO independence, offering input on such issues as who should be on LAFCOs, who should staff the LAFCOs, and how the LAFCO should be funded. Ultimately, the new law takes further steps to establish LAFCOs as independent agencies. AB 2838 added a section emphasizing that commission members must exercise their independent judgment on behalf of the interests of the public as a whole.²³ LAFCOs also must now have their own staff and facilities.²⁴ Nonetheless, to minimize the financial burden of this new independence, particularly for rural LAFCOs, and to minimize the impact on county staff assisting LAFCOs, the new law allows each LAFCO to select staff and obtain facilities from a public agency, including the county.²⁵ LAFCOs thus may contract with a county or other public employees to perform these roles, and as a result, the impact of this change is unlikely to be significant for many LAFCOs. As a practical matter, in the near term at least, staff and quarters for many LAFCOs will likely remain the same, under a contract executed between the LAFCO and the county.

Subsequent changes to the funding of LAFCOs prompted more controversy, which ultimately resulted in sweeping changes. Almost uniformly, commentators observed that the previous law that allowed counties to provide all funding and operation cost had in some instances led to the appearance that the counties have some leveraged influence upon LAFCOs, and suggested making funding a three-way split matched by state contributions,²⁶ or making funding of LAFCOs a responsibility equally divided between counties, cities, and special districts.²⁷

Ultimately, AB 2838 established a funding scheme for LAFCOs in which operational costs are borne jointly and equally by the county, cities, and independent agencies (for LAFCOs that include special representative districts). As a result, LAFCOs presumably will be liberated from charges of county

bias in LAFCO decision-making. It is hoped that increased funding will also allow each LAFCO to complete more studies and analysis of the proposals that it receives.

C. New Requirement for Written Policies and Procedures

In addition to the critiques on LAFCO structure and funding, the 21st Century Commission heard criticism from several commentators that LAFCO policies are often unclear and their procedures uncertain. In response, the 21st Century Commission recommended and the Legislature adopted a new requirement that each LAFCO must establish written policies and procedures not later than January 1, 2002, and that each LAFCO must thereafter exercise its powers in a manner consistent with those policies and procedures.²⁸ Throughout the statute, references to these policies have been added. For example, the provisions on reorganizations now state that LAFCOs should review proposals “consistent with written policies, procedures and guidelines adopted by the [LAFCO] Commission.”²⁹ The Legislature stopped short of declaring, as the 21st Century Commission had recommended, that actions by LAFCOs that fail to adopt written policies and procedures will be voidable. As a result of AB 2838, LAFCOs throughout the state must reevaluate existing written policies and procedures and/or devise new ones.

Here, again, it is unclear whether establishing policies and procedures will actually lead to more clarity and/or uniformity in LAFCO decision-making. For example, Section 56668 of the Cortese-Knox-Hertzberg Act of 2000 (the “Act”) sets forth the specific criteria a LAFCO must take into account when considering an application for annexation or detachment. While policies and procedures, like regulations, can fill in the details of the process whereby a LAFCO considers these statutorily mandated factors, no LAFCO should pass policies or procedures in contravention of the Act. Rather, an individual LAFCO’s policies and procedures should help facilitate the approvals for applicants by providing guidance as to the form and organization of the contents of an application. As such, policies and procedures could unnecessarily (and potentially illegally) impose additional, contrary and/or more onerous requirements and criteria than those set forth in the Act.

Furthermore, the authors question the legitimacy of local policies and procedures that have the effect of restricting a LAFCO’s ability to consider each unique proposal on its own merits, consistent with the factors set forth in the statute. For example, it is unclear whether a LAFCO policy that reflects a county’s urban limit line should be honored as paramount in a situation where a city-proposed annexation would violate the county urban limit line, but be in accordance with the city’s general plan. Under Section 56668(g), a LAFCO is required to consider whether a proposal is consistent “with city or county general and specific plans.” While it could be argued that the Act permits a LAFCO to consider *either* a city or county’s plans, it is not clear whether a LAFCO policy institutionalizing a preference for one over the other is a violation of the Act, especially in light of other parts of the Act that have generally provided for LAFCOs to move *away* from county influence. Policies and procedures which may pre-determine the outcome of whole categories of decisions actually contravene the Act, which is designed to ensure that each decision is made individually, by a neutral body, based on certain defined criteria. In other words, we believe the Act required such local policies to provide predictability in the process, not to override the statutory criteria, nor to favor one public agency “player” in the LAFCO process at the expense of another.

D. Requiring Disclosure of Contributions and Expenditures

Under the amended statute, a LAFCO may now establish lobbying disclosure rules. AB 2838 added language authorizing a LAFCO to require disclosure of contributions, expenditures, and independent expenditures made in support of or opposition to a proposal.³⁰ The language further authorized a LAFCO to require lobbying disclosure and reporting requirements for persons who attempt to influence pending decisions by commission members, staff, or consultants.³¹ Each LAFCO was required to hold public hearings to discuss adoption of policies and procedures governing disclosures in 2001.³² This change was in response to the San Fernando Valley proposal to secede from the City of Los Angeles, and its impacts cannot be determined.

E. Infrastructure and Special Districts

Not surprisingly, given the LAFCO authority over district boundaries, special districts expressed to the 21st Century Commission a desire for increased opportunities for representation on LAFCOs during the hearing process. The 21st Century Commission and Legislature agreed, and language requiring a LAFCO to adopt regulations regarding the functions and services of a special district as a condition of LAFCO representation was deleted by AB 2838.

Additionally, one of the more significant changes for special districts is the new authority granted to LAFCOs to review proposals to extend services outside existing boundaries. Previously, agreements between two existing public entities to extend services were exempt from LAFCO review and approval; this exemption has been limited to situations where the public service to be provided is an alternative to or substitute for public services already being provided by an existing service provider. The new law states that a LAFCO may review and approve a proposal extending services into previously unserved areas "to ensure that the proposed extension is consistent with the policies of Sections 56001, 56300, 56301, and the adopted policies of the commission implementing these sections, including promoting orderly development, discouraging urban sprawl, preserving open space and prime agricultural lands, providing housing for persons and families of all incomes, and the efficient extension of governmental services."³³ It is not clear whether LAFCOs have the power to disapprove such proposed extensions. Furthermore, this provision has a sunset date of January 1, 2007.³⁴

The 21st Century Commission recommended that LAFCO's general powers be expanded and that LAFCO approval be required for extension of major "backbone" (water, sewer, wastewater, or road) infrastructure to previously undeveloped or underdeveloped areas in either an unincorporated or incorporated area. During the 2001 session, the Legislature made additional amendments regarding the powers of LAFCOs vis-à-vis special districts. Of particular interest are several new sections that specify procedures for a special district to propose providing "a new or different function or class of services within its jurisdictional boundaries."³⁵

F. Spheres of Influence

The 21st Century Commission surveyed LAFCOs with regard to their efforts to comply with the requirement that they must establish spheres of influence for cities, and heard several suggestions on revising the current sphere of influence provisions. Procedural changes were recommended to address the concern that some cities were updating spheres only as components of

previously unforeseen annexation requests, such as a requirement that LAFCOs update their spheres of influence every five years.³⁶ The Legislature adopted this recommendation, and the new law mandates that LAFCOs must review and update spheres at least once every five years, using the same public notice and hearing procedures when the spheres of influence are adopted.³⁷

One significant change to sphere of influence proceedings adopted by the Legislature is the addition of a provision that encourages cities and counties to meet and negotiate proposals for new and updated spheres of influence before they are submitted to LAFCOs. At least 30 days before an application to determine a new sphere of influence or to update an existing sphere of influence may be submitted to a LAFCO, a city must meet with county representatives to discuss the proposed sphere and its boundaries and "explore methods to reach agreement on the boundaries, development standards and zoning requirements within the sphere to ensure that that development within the sphere occurs in a manner that reflects the concerns of the affected city and is accomplished in a manner that promotes the logical and orderly development of areas within the sphere."³⁸ If no agreement is reached between the parties, the discussions may be extended an additional 30 days.³⁹ If the parties do agree, this agreement may be forwarded to the LAFCO, and the LAFCO will "give great weight to the agreement" in its final determination of the city sphere,⁴⁰ and the city must follow the terms of the adopted agreement as it moves forward with development of the area. Conversely, if no agreement is submitted to the LAFCO because one has not been reached, the LAFCO will evaluate the request in accordance with statutorily prescribed criteria and its own policies.⁴¹ As previously stated, these provisions have a sunset date of January 1, 2007.⁴²

To address the concern that many LAFCOs lack comprehensive knowledge of the availability and need for services in each county, the Legislature adopted a suggestion by the 21st Century Commission that LAFCOs conduct periodic reviews of the municipal services provided in the county or other appropriate area designated by the LAFCO.⁴³ AB 2838 requires that as part of the review, the LAFCO must produce a written report addressing: (1) infrastructure needs 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) government structure options, including advantages and disadvantages of consolidation or reorganization of service providers; (8) evaluation of management efficiencies; and (9) local accountability and governance.⁴⁴ The service review must be comprehensive, covering all the agencies that provide the identified service or services within the designated area.⁴⁵ In addition, the service review must be conducted before a LAFCO considers the update or establishment of a sphere, or in conjunction with that process.⁴⁶ By July 1, 2001, guidelines for service reviews were to be prepared by the Office of Planning and Research in consultation with LAFCOs, CALAFCO, and local governments.⁴⁷ At the current time, the Office of Planning and Research has completed a final draft of the Local Agency Commission Municipal Service Review Guidelines, and the public comment period closed on October 30, 2002.⁴⁸

The amended statute creates new requirements for changes in spheres of influence. When adopting, amending, or updating a sphere of influence for a special district, a LAFCO must (1) require that existing districts file written statements with the LAFCO, specifying the functions or classes of service provided by

hose districts, and (2) establish the nature, location, and extent of any functions or classes of service provided by existing districts.⁴⁹ The Act also requires cities to negotiate sphere of influence proposals with counties, which may help to provide cities with the ability to improve their influence over development within spheres.⁵⁰ Overall, the changes are likely to reduce the chance for extensive development approved by counties in unincorporated areas without LAFCO review because many aspects of this development will now be subject to LAFCO's authority.

G. Annexations

The 21st Century Commission heard numerous recommendations on improving both the procedures and criteria used in reviewing proposed annexations. Adopting the 21st Century Commission's recommendations on procedural reform, for the first stage in the annexation process, AB 2838 makes uniform the petition signature requirements for all annexation petitions, lowering the signature requirement for a proposal for annexation to a city with more than 100,000 residents from eight to five percent. AB 2838 now requires that before circulating any petition for annexation, the proponent must file a notice of intention with the executive officer of the LAFCO.⁵¹ The law gives an outline of the form of the required notice and prescribes its length and contents.⁵² AB 2838 has also added a requirement that the county bear the costs of verifying signature petitions on the petitions submitted to LAFCO.⁵³

Many commentators have advocated changes designed to better integrate LAFCOs into the planning process, allowing the LAFCO to play a role at the earliest possible stages of the planning process. CALAFCO, for example, suggested mandatory LAFCC notification for proposed land use projects, general plan updates, and proposals involving public services and/or future LAFCO actions.⁵⁴ Michael Ott from San Diego LAFCO suggested that LAFCOs be formally consulted on proposals.⁵⁵ However, these changes were rejected by both the 21st Century Commission and the Legislature due to concern about providing too much control to LAFCOs in local land use matters.

The 21st Century Commission recommended, and the Legislature adopted, a requirement that cities pre-zone any territory to be annexed as a condition of annexation.⁵⁶ The new law requires a LAFCO to base its annexation decision on the general plan and pre-zoning of the city. In addition, for a period of two years after the completion of the annexation, the statute prohibits subsequent changes to the general plan for the annexed territory and subsequent zoning changes that are not in conformance with the pre-zoning designations unless the city legislative body has made a finding at a public hearing that a substantial change has occurred under circumstances that necessitate a departure from the pre-zoning.⁵⁷ This is an important change for a city seeking an annexation. Because amendments to a general plan designation or zoning are restricted for two years after annexation, sufficient flexibility must be maintained in the initial pre-zoning process to allow anticipated development.

As noted above, AB 2838 also added a requirement that expenditures for political purposes related to an annexation proposal which has been submitted to a LAFCO, and contributions in support of or in opposition to a proposal, must be disclosed and reported to the same extent, and subject to the same requirements, as for local initiative measures presented to the electorate.⁵⁸

In keeping with the policies of the law, the Legislature also adopted several recommendations intended to further annexa-

tion decisions and AB 2838 has added five additional factors to the list of factors that a LAFCO must consider in evaluating an annexation proposal, bringing the total to fourteen. The new factors LAFCOs must now also consider are:

- (1) The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including revenues for such services will be sufficient following the proposed boundary change.
- (2) Whether timely availability of water supplies will be adequate for projected needs including, but not limited to, the projected needs as specified in California Government Code Section 65352.5.
- (3) 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 council of governments.
- (4) Any information or comments from the land owner or owners.
- (5) Any information relating to existing land use designations.⁵⁹

AB 2838 also adds a section stating that a LAFCO may, but is not required to, consider the regional growth goals and policies established by a collaboration of elected officials of the area.⁶⁰ This section includes a qualifier noting that it does not grant any new powers or authority to the commission or any other body to establish regional growth goals and policies independent of the powers granted by other laws.⁶¹ However, the Legislature rejected the 21st Century Commission's recommendation that where an urban limit growth boundary or regional growth goals and policies established by elected officials exists, they are to be added to the factors to be considered.

Although the 21st Century Commission recommended that LAFCOs be authorized to address densities and infill opportunities as a specified factor when considering a city's annexation request, the Legislature rejected this request. This recommendation from the 21st Century Commission to the Legislature reflected a wide variety of suggestions for controlling sprawl: adoption of policies establishing infill criteria that would apply to city annexations;⁶² allowing LAFCOs to require infill of vacant and underutilized lands when considering proposals for reorganizations;⁶³ requiring LAFCOs to consider regional alternatives for fulfilling development needs prior to approving a change in organization that is above a certain threshold;⁶⁴ and, rewarding infill development through financial incentives.⁶⁵ In contrast, however, Kern County and others warned that it was inappropriate to assume that urbanization of unincorporated areas is a bad practice or that counties are incapable of providing necessary infrastructure for urban uses.⁶⁶

The 2000 amendments also make clear that the written findings are not required to support a LAFCO's approval or disapproval of a proposed annexation. In challenging a LAFCO's determination, any inquiry shall extend only to whether there was a fraud or prejudicial abuse of discretion.⁶⁷ In addition, the Act now explicitly states that "[e]xcept for findings regarding the value of written protests, LAFCO is not required to make any express findings concerning any of the factors considered by LAFCO."⁶⁸

During the 2001 session, certain provisions of Cortese-Knox regarding incorporations were further amended. Specifically, in preparing the required comprehensive fiscal

analysis for a proposal including an incorporation, the executive officer is required to include all "direct and indirect costs associated with the provision of existing services in the affected territory," including "any general fund expenditures used to support or subsidize a fee-supported service where the full cost of providing the service are not fully recovered through fees."⁶⁹ In addition, certain procedural requirements for processing proposals were amended, including the guidelines for incorporation hearings, continuance hearings, and reconsideration hearings.⁷⁰

H. Agricultural Land and Open Space

The 21st Century Commission heard numerous comments on the effect of urban growth upon agricultural lands. Several farming interest groups urged the 21st Century Commission to adopt a more flexible, expansive definition of and policy towards prime agricultural lands and open space. Conversely, at least one LAFCO noted that because most of the land within the Salinas Valley qualified as prime agricultural land, broad and vague definitions of agricultural lands could make it difficult to protect the area's extraordinarily fertile, "truly unique" farmlands, and suggested that LAFCOs be permitted to make adjustments for unique conditions.⁷¹ In its final report, the 21st Century Commission suggested that the definition of "prime agricultural land" be amended to include a qualification that the land meets the prime agricultural standard if irrigation is feasible and it is rated as class I or class II in the Natural Resource Service land use capability classification. The 21st Century Commission also recommended an update to the economic criteria required for agricultural land classification and the addition of an "escalator" provision. Finally, to allow the implementation of stronger measures to protect local agricultural industries, such as grazing and low margin crops, even if they do not meet a strict statewide definition of agricultural land, the 21st Century Commission recommended including land which "has been designated by the commission as agricultural land of local economic significance based upon the record and after a public hearing."⁷² The Legislature adopted all of the recommendations except the last one allowing localized designations of land.⁷³

On the other hand, the Legislature rejected the 21st Century Commission's recommendation that an additional policy and priority be included in the law that LAFCOs should not disapprove "actions which would enable the change in use of existing prime agricultural lands or open space lands . . . where feasible alternative locations for the development exist elsewhere within the existing jurisdiction or the sphere of influence of the existing jurisdiction on land which are not prime agricultural land and which are not open space lands that are dedicated or otherwise restricted to open space use."⁷⁴ This recommendation reflected the comments of participants urging the adoption of measures to make it more difficult to develop prime agricultural land and open space.⁷⁵

Finally, AB 2838 also requires notice of all hearings, either by mail or electronically, to the Director of Conservation if the proposal will result in the annexation to a city of land that is subject to a Williamson Act contract.

I. Hearing and Determination

During the public hearings, the 21st Century Commission heard many critiques of the Act's requirement that a LAFCO designate a "conducting authority"—usually the affected city, county, or district—and direct it to initiate proceedings and

make any statutorily required findings and determinations applicable for the proposal. One LAFCO asked, for example, "why would a LAFCO want to start something they may not be able to finish?"⁷⁶ The 21st Century Commission agreed, noting that conducting authority proceedings is most likely a holdover of pre-LAFCO laws. The 21st Century Commission found that the conducting authority process "unnecessarily introduces a second lead agency into the reorganization process, causing confusion and delay," often because the agencies are unfamiliar with LAFCO procedures.⁷⁷ Consequently, the 21st Century Commission suggested that LAFCOs be assigned the responsibilities of the conducting authority.⁷⁸ The Legislature adopted these suggestions, and the new law now designates LAFCO as the agency to conduct all protest proceedings and elections. In other words, LAFCO now carries out the proceedings from start to finish. When a local election is required, a LAFCO may direct that a local agency call an election. The new law also states that the LAFCO approval will expire within one year if a certificate of completion for a change of organization or reorganization has not been filed and an extension has not been granted.

Once the LAFCO has adopted a resolution making determinations, any affected person or affected agency may file a written request with the executive officer requesting amendments to or reconsideration of the resolution.⁷⁹ AB 2838 has added a requirement that the amendment or reconsideration request must state the new or different facts that could not have been previously presented, or the applicable new law, that the requesting party claims warrants the reconsideration.⁸⁰ The request must be filed within 30 days of adoption of the resolution making the determinations, and the request must be placed on the agenda of the next commission meeting for which notice can be given. At the conclusion of its consideration, the commission may approve or disapprove the request, and the determination of the commission will be final and conclusive.⁸¹

J. Protest Proceedings

AB 2838 has changed the law with respect to protest hearings. In the case of uninhabited territory, the LAFCO may waive protest proceedings entirely if all of the owners of land within the affected territory have given their written consent to the annexation and all affected local agencies that would gain or lose territory as a result of the annexation have consented in writing to a waiver of the protest proceedings.⁸²

In the case of inhabited territory, the LAFCO may waive protest proceedings entirely if the LAFCO has provided written notice of the commission proceedings to all registered voters and landowners within the affected territory, no written opposition from registered voters or landowners within the affected territory is received prior to the conclusion of the meeting, and all affected local agencies that would gain or lose territory as a result of the annexation have consented in writing to a waiver of protest proceedings.⁸³

One notable clarification made by AB 2838 is the addition of a section stating that "[i]n any action or proceeding to attack, review, set aside, void or annul a determination by a [LAFCO] on grounds of noncompliance with this division, any inquiry shall extend only to whether there was fraud or prejudicial abuse of discretion."⁸⁴ "Prejudicial abuse of discretion" is established where a court finds that the decision is not supported by substantial evidence.⁸⁵

7 PUBLIC NOTICE AND HEARING OPPORTUNITIES

The 21st Century Commission heard testimony from a few citizens advisory groups raising concerns over the adequacy of notice of proposals and procedures for notifying the public regarding pending proposals. To address concerns with notification, while recognizing that notification can be burdensome on large proposals, the 21st Century Commission recommended that LAFCOs be encouraged to maintain a website and make notices of public hearings available on the site. Based on the 21st Century Commission recommendations, AB 2838 also added a requirement that all registered voters and owners of property within 300 feet of the exterior boundary of property subject to a hearing be provided with notice of the hearing.⁸⁶

VI. CONCLUSION

In conclusion, this major overhaul of the laws governing LAFCOs and local agency formation proceedings will simultaneously make changes to many aspects of LAFCO formation and proceedings, while leaving the underlying features intact. In many respects, AB 2838 has helped ensure that LAFCOs will be more balanced and better funded, that reorganization proceedings will progress in a more rational and timely manner, that procedures for city, county, and special district boundary changes will be improved, and that opportunities for citizen participation in reorganization proceedings will be increased. At the same time, the Act has left the fundamental aspects of LAFCOs intact

and did not expand the jurisdiction or powers of LAFCOs—for example, both the 21st Century Commission and the Legislature rejected suggestions of giving LAFCOs a bigger role in land use planning processes. As a result, the Act will only minimally reduce sprawl or preserve agricultural lands, but it is not intended to do this. Rather, AB 2838 represents the Legislature's determination that such objectives are best left to an entity formed exclusively for such purposes. LAFCOs, in the meantime, will stick to their unique purpose—encouraging orderly formation and development of local agencies based upon multi-factor, balanced analyses of local conditions and circumstances.

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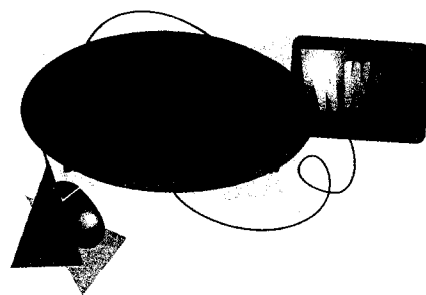
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ENDNOTES

1. Peter M. Detwiler, "Annexation and Boundary Issues," in *California Environmental Law and Land Use Practice* §73.10 (Daniel P. Selmi and Kenneth A. Manaster eds.) [hereinafter *Detwiler*].
2. William Fulton, *Guide to California Planning*, Solano Press, 1999, p. 76; "What Is Lafco?" at <http://www.calafco.org> [last visited June 19, 2001].
3. *Detwiler*, *supra* note 1, §73.10(3).
4. "What Is Lafco?" <http://www.calafco.org> [last visited June 19, 2001].
5. San Francisco recently formed a LAFCO to examine issues related to the proposal to establish a local municipal utility district to serve residents of the City and Brisbane.
6. *Detwiler*, *supra* note 1 §§ 73-9, 73-11.
7. *Citizens Against Forced Annexation v. LAFCO*, 32 Cal.3d 816, 828 (1982), quoting *Tillie Lewis Foods, Inc. v. City of Pittsburg*, 52 Cal.App.3d 983, 995 (1975); *Morro Hills Community Services District v. Board of Supervisors of San Diego County*, 72 Cal.App.3d 765, 781 (1978).
8. *Id.*
9. Cal. Gov't Code § 56301.
10. *Id.* §§ 56425-56428.
11. *Id.* §§ 56021, 56033, 56017, 56034, 56035, 56039, 56043, 56073.
12. *Id.* § 56375(g)-(h).
13. By allowing voters to "pass judgment on proposed annexation proceedings." *L.I.F.E. v. City of Lodi*, 213 Cal.App.3d 1139, 1145-46 (1989).
14. *Id.*
15. Commission on Local Governance for the 21st Century, *About the Commission*, at <http://www.clg21.ca.gov/about.html> [last visited July 11, 2001].
16. Cal. Gov't Code § 56001.
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.* § 56301.
22. *Id.*
23. *Id.* § 56325.1.
24. *Id.* § 56380.
25. *Id.* § 56380.
26. Michael Ott, San Diego LAFCO, October 21, 1998.
27. Miike Gotch, CALAFCO, August 12, 1998. Harry Ehrlich, CA Special Districts Association, July 9, 1999. Michael Ott, San Diego LAFCO Executive Officer, October 21, 1998.
28. Cal. Gov't Code § 56300.
29. *Id.* § 56375(a).
30. *Id.* § 56100.1.
31. *Id.* § 56300(c).
32. *Id.*
33. *Id.* § 56434.
34. *Id.* § 56434(b).
35. *Id.* § 56824.12(a); see also *id.* §§ 56824.10-56824.14.
36. S.R. Jones, CALAFCO, October 27, 1999.
37. Cal. Gov't Code § 56425(f); Growth Within Bounds, Appendix C, p. 162.
38. Cal. Gov't Code at § 56425(b).
39. *Id.*
40. *Id.*
41. *Id.* § 56425(d).
42. *Id.* § 56425(i).
43. *Id.* § 56430.
44. *Id.* § 56430(a).
45. *Id.* § 56430(b).
46. *Id.* § 56430 (c).
47. *Id.* § 56430(d).
48. Governor's Office of Planning and Research—LAFCO Reform, at <http://www.opr.ca.gov/planning/LAFCOReform.shtml>, under "LAFCO Incorporation Guidelines" (last visited January 28, 2003).
49. Cal. Gov't Code § 56425(h).
50. Cal. Gov't Code § 56425(b).
51. *Id.* § 56700.4.
52. *Id.* § 56700.
53. *Id.* § 56383(e).
54. Ron Wootton, CALAFCO, July 9, 1999.
55. Michael Ott, SD LAFCO.
56. *Id.* § 56375(a)(3).
57. *Id.* § 56375(e).
58. *Id.* § 56700.1.
59. *Id.* § 56668 (j)-(n).
60. *Id.* § 56668.5.
61. *Id.*
62. Ron Wootton, CALAFCO, July 9, 1999.
63. Roger Anderson, Santa Cruz LAFCO, March 25-26, 1999.
64. Vicki Moore, Greenbelt Alliance, April 30, 1999.
65. Daniel Carrigg, League of California Cities, October 27, 1999.
66. Ted James, Kern County Planning Department, July 9, 1999.
67. Cal. Gov't Code § 56107(c).
68. *Id.* § 56668.3(b).
69. *Id.* § 56800(a)(1).
70. *Id.* §§ 56895, 57002, 57050.
71. Testimony of Hon. Edith Johnsen, Member of Monterey County LAFCO and Monterey County Board of Supervisors, March 25, 1999.
72. Growth Within Bounds, Appendix C, p. 165.
73. Cal. Gov't Code § 56064(a)-(e).
74. Growth Within Bounds, Appendix C, p. 166.
75. Tom Umenhofer, Santa Barbara LAFCO, July 9, 1999, Kathy Long, Ventura LAFCO, July 9, 1999.
76. Testimony of Irwin Fust, County Member, Shasta County LAFCO.
77. Commission on Local Governance for the 21st Century, Growth Within Bounds, January 2000, p. 38.
78. *Id.* at 39.
79. Cal. Gov't Code § 56895(a).
80. *Id.*
81. *Id.* § 56895(h).
82. *Id.* § 56663(c).
83. *Id.* § 56663(d)(1)-(2).
84. *Id.* § 56107(c).
85. *Id.*
86. *Id.* § 56157(f).1.