



# TULARE COUNTY LOCAL AGENCY FORMATION COMMISSION

210 N. Church Street, Suite B, Visalia 93291 Phone: (559) 623-0450 FAX: (559) 733-6720

**LAFCO MEETING AGENDA**  
**FEBRUARY 6, 2013 @ 2:P.M.**  
**BOARD OF SUPERVISORS CHAMBERS**  
**COUNTY ADMINISTRATIVE BUILDING**  
2800 West Burrel Avenue  
Visalia CA 93291

COMMISSIONERS:  
Cameron Hamilton, Chair  
Steve Worthley, V-Chair  
Rudy Mendoza  
Allen Ishida  
Juliet Allen

ALTERNATES:  
Mike Ennis  
Dennis Mederos  
Janet Hinesly

EXECUTIVE OFFICER:  
Ben Giuliani

- I. **Call to Order**
- II. **Approval of Minutes from December 5, 2012 (Pages 1-4)**
- III. **Public Comment Period**

At this time, members of the public may comment on any item not appearing on the agenda and that is within the scope of matters considered by the Commission. Under state law, matters presented under this item cannot be discussed or acted upon by the LAFCO Commission at this time. So that all interested parties have an opportunity to speak, any person addressing the Commission may be limited at the discretion of the chair. At all times, please use the microphone and state your name and address for the record.

IV. **Consent Calendar**

There are no items.

V. **Continued Action Items**

- 1. **Adoption of the City of Visalia's Municipal Service Review (Pages 5-26)**  
*[Public Hearing].....Recommended Action: Adoption*

Commission action on the City of Visalia Municipal Service Review (MSR) Update was continued from the August 8, 2012, October 24, 2012 and December 5, 2012 meetings to the February 6, 2013 meeting. Tulare County LAFCO will consider the adoption of the City of Visalia's Municipal Service Review Update. The MSR and its determinations were distributed to the Commission and posted for public review on July 18<sup>th</sup>, 2012. The complete MSR is posted on the Commission's website at: <http://www.co.tulare.ca.us/lafco/default.asp>. This item is exempt from the California Environmental Quality Act: Sections 15061(b)(3) and 15306.

**NOTE: Persons wishing to speak on any of the agenda items who have made a political contribution of more than \$250 to any commissioner in the last twelve months must indicate this when speaking.**

**VI. New Action Items**

1. Termination of LAFCO Case 1442-D-60, City of Dinuba Reorganization 2007-02 (Margosian) (Pages 27-32)  
*[No Public Hearing].....Recommended Action: Terminate*

Case 1442-D-60 was conditionally approved by the Commission on April 1, 2009 (Res. 09-003). The City has recently submitted a letter requesting that the reorganization be withdrawn. Staff is recommending adopting the attached resolution, terminating Case 1442-D-60.

**VII. Executive Officer's Report**

1. Proposed Amendment to Policy C-9 (AB 1555 Island Annexation Policy) (Pages 33-50)

In response to a recent Attorney General opinion, the proposed amendment would amend policy to remove a provision that allows for the splitting of County islands greater than 150 acres to take advantage of the stream-lined island annexation process. Staff will bring this policy back to the Commission for action at their March 6th meeting.

2. Legislative Update (No Page)

The Executive Officer will provide a legislative update at the meeting.

3. Upcoming Projects (No Page)

The Executive Officer will provide a summary and tentative schedule of upcoming LAFCO cases and projects.

4. 2013 CALAFCO Schedule (Page 51)

The schedule for 2013 CALAFCO events is enclosed.

**VIII. Correspondence**

*None*

**IX. Other Business**

1. Commissioner Report

At this time, any Commissioner may inform the Commission, Staff, or the public of pertinent LAFCO issues not appearing on the agenda.

2. Request from LAFCO for items to be set for future agendas

**X. Closed Sessions**

There are no items.

**NOTE: Persons wishing to speak on any of the agenda items who have made a political contribution of more than \$250 to any commissioner in the last twelve months must indicate this when speaking.**

## **XI. Setting Time and Place of Next Meeting**

March 6, 2013 @ 2:00 P.M. in the Board of Supervisors Chambers in the County Administration Building

## **XII. Adjournment**

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Item No.

### ***Agenda Summary***

- II. Please see enclosed December 5, 2012 meeting minutes.*
- V.1 Please see enclosed Memo and Determinations for the City of Visalia MSR update.*
- VI.1 Please see enclosed Memo regarding Termination of LAFCO Case 1442-D-60.*
- VII.1 Please see enclosed Memo for Proposed Amendment to Policy C-9.*
- VII.2 There are no enclosures for this item.*
- VII.3 There are no enclosures for this item.*
- VII.4 Please see enclosed 2013 CALAFCO schedule.*

**NOTE: Persons wishing to speak on any of the agenda items who have made a political contribution of more than \$250 to any commissioner in the last twelve months must indicate this when speaking.**

**TULARE COUNTY LOCAL AGENCY FORMATION COMMISSION**  
**Minutes of the Meeting**  
**December 5, 2012**

**Members Present:** Julie Allen, Steven Worthley, Cameron Hamilton

**Members Absent:** Rudy Mendoza, Allen Ishida

**Alternates Present:** Dennis Mederos

**Alternates Absent:** Mike Ennis, Janet Hinesly

**Staff Present:** Ben Giuliani, Cynthia Echavarria, Jessica Moncada

**Counsel Present:** Arlene Silva

**I. Call to Order**

Chair Allen called the Tulare County Local Agency Formation Commission meeting to order at 2:03 p.m. on December 5, 2012

**II. Approval of the October 24, 2012 Minutes:**

Upon motion by Commissioner Worthley and seconded by Commissioner Hamilton, the Commission unanimously approved the October 24, 2012 minutes.

**III. Consent Calendar Items**

There were no Consent Calendar items.

**IV. Continued Action Items**

1. Adoption of the City of Visalia's Municipal Service Review

Staff Analyst Cynthia Echavarria stated this item was continued from the October 24th meeting. This is the second continuance for the Visalia Municipal Service Review. Staff recommended the adoption of the City of Visalia MSR. No additional written comments were submitted, although the County of Tulare did call Executive Officer Ben Giuliani requesting a continuance for this item.

Dave Bryant from the County of Tulare stated since the last LAFCO meeting, the County of Tulare and the City of Visalia had a very productive meeting with regard to reviewing the written determinations in light of looking at Urban Development Boundaries. In addition, regional housing needs allocations, island annexations and provisions for coordinating solid waste in the future were discussed. Mr. Bryant requested a continuance to have one additional meeting with City staff and indicated that it would be the County's last continuance request.

Josh McDonnell of the City of Visalia indicated that the City was not opposed to one more continuation.

Upon motion made by Commissioner Ishida and seconded by Commissioner Worthley the Commission unanimously approved to move the City of Visalia's Municipal Review to February.

## **V. New Action Items**

### **1. Proposed Draft Amendment to Policy C-1**

Executive Officer Giuliani reviewed the proposed edits to Policy C-1 in regards to Disadvantaged Unincorporated Communities (DUCs). The policy amendment addressed a recent legislative language change of “residents” to “registered voters” in context with potential annexations of DUCs.

Upon motion made by Commissioner Hamilton and seconded by Commissioner Worthley the Commission unanimously approved the proposed draft amendment to Policy C-1.

### **2. Alpaugh CSD Election Results**

Staff Analyst Cynthia Echavarria stated the Commission ordered the conditional dissolution of the Tulare County Waterworks District #1 without election and ordered the formation of the Alpaugh Community Services District subject to the confirmation of the registered voters within the approved boundaries on July 11<sup>th</sup>, 2012. The dissolution of the TCWWD #1 was conditioned upon the successful formation of the Alpaugh CSD. The formation of the CSD was approved at the November 6<sup>th</sup> election with 74.52% in favor and 24.58% opposed. Staff recommended that the Commission accept the final election results for the successful formation of the Alpaugh CSD.

Upon motion made by Commissioner Worthley and seconded by Commissioner Hamilton the Commission unanimously accepted the Alpaugh CSD election results.

### **3. Election of Officers for 2013**

Staff Analyst Echavarria reported that the Commission selects a new Commission Chair and Vice Chair on a rotating basis (County-City-Public) in accordance with LAFCO Policy A-4. City representative Cameron Hamilton is scheduled to be selected as Chair. County representative Steve Worthley is scheduled to be selected as Vice-Chair. The new officers' term would commence on January 1, 2013 and end on December 31, 2013.

Upon motion made by Commissioner Worthley and seconded by Commissioner Allen the Commission unanimously approved Cameron Hamilton as Chair.

Upon motion made by Commissioner Hamilton and seconded by Commissioner Allen the Commission unanimously approved Steven Worthley as Vice-Chair.

### **4. Cancellation of January Meeting**

Due to a lack of cases and matters of substance, LAFCO Staff proposed that the January LAFCO meeting be canceled.

Upon motion made by Commissioner Worthley and seconded by Commissioner Hamilton the Commission unanimously approved to cancel the January 9, 2012 LAFCO Meeting.

## **VI. Executive Officer's Report**

### **1. Annual LAFCO Map Presentation**

Cynthia Echavarria presented to the Commission a series of maps and statistical tables that track city and special district annexation activity for both the preceding year as well as annexation activity over the course of LAFCO's existence. The map and table series also illustrated changes – in terms of acreage - in County prime agricultural land, land uses, government owned land, and land under Williamson Act Contract.

Commissioner Allen stated that she finds the maps and table very useful.

2. Legislative Update

Executive Officer Giuliani stated that CALAFCO Legislative Committee meets on December 7th. The Committee will be discussing several issues including the expiration of the streamlined island annexation provisions that sunset at the end of 2013. CALAFCO may take action this year in trying to extend the sunset date. Also, the issue of the timing of MSRs and SOIs schedule will be discussed, CALAFCO may suggest going to an eight year or ten year time horizon in place of the current 5 year requirement.

3. Upcoming Projects

Executive Officer Ben Giuliani stated there are no projects for the month of January. Scheduled for the month of February, will be the Visalia Municipal Service Review and possibly the Tulare MSR. The Lindmore Irrigation District reorganization is expected sometime soon. In addition, the City of Porterville is working on a couple of annexations involving some water companies.

**VIII. Correspondence**

None

**IX. Other Business**

1. Commissioner Report - At this time, any Commissioner may inform the Commission, Staff, or the public of pertinent LAFCO issues not appearing on the agenda.

None

2. Request from LAFCO for items to be set for future agendas

Commissioner Allen requested that the effectiveness of agricultural mitigation be looked at in other counties.

**X. Closed Sessions**

None

**XI. Setting Time and Place of Next Meeting**

February 6, 2013 @ 2:00 P.M. in the Board of Supervisors Chambers in the County Administration Building

**XII. Adjournment**

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# **TULARE COUNTY LOCAL AGENCY FORMATION COMMISSION**

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COMMISSIONERS:  
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Juliet Allen*

ALTERNATES:  
*Dennis Mederos  
Janet Hinsely  
Mike Ennis*

EXECUTIVE OFFICER:  
*Ben Giuliani*

February 6, 2013

TO: LAFCO Commissioners, Alternates, Counsel

FROM: Cynthia Echavarria, Staff Analyst

SUBJECT: Visalia Municipal Service Review Update

## **Background**

The first Municipal Service Review (MSR) for the City of Visalia was adopted as part of the Group 1 MSRs by the Commission at the March 2006 meeting. Since the adoption of the MSR, the City has started an update to its General Plan. The Sphere of Influence (SOI) for Visalia was last comprehensively reviewed by the Commission in 1974 followed by several SOI amendments. Before the Commission can approve a major amendment or a comprehensive update of the SOI, the updated MSR determinations need to be adopted. At the request of the County of Tulare, adoption of the MSR was continued from the August 8, 2012, October 24, 2012 and December 5, 2012 LAFCO meetings to give the County an opportunity to have meetings with the City to discuss various issues; including growth and population, annexations, potential Sphere of Influence updates and development impact fees.

## **Discussion**

Since the Visalia MSR was first developed in March of 2006, Government Code was modified that combined twelve topic areas into six. Recently, a seventh was added into law relating to disadvantaged unincorporated communities. The Commission is required to prepare a written statement of determinations for the following:

- Growth and population projections for the affected area.
- The location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence.
- Present and planned capacity of public facilities, adequacy of public services and infrastructure needs or deficiencies including needs or deficiencies related to sewers, municipal and industrial water, and structural fire protection in any disadvantaged, unincorporated communities within or contiguous to the sphere of influence.



- Financial ability for agencies to provide services.
- Status of, and opportunities for, shared facilities.
- Accountability for community service needs, including governmental structure and operational efficiencies.
- Any other matter related to effective or efficient service delivery, as required by commission policy.

*Note: In the updated MSR, information regarding the location and characteristics of disadvantaged unincorporated communities and services relating to those communities were combined under the last topic area.*

Technical data was updated based on newer supporting documents such as the City of Visalia's General Plan Update Existing Conditions Report (2011), City of Visalia's Housing Element Background Report and Policy Document (2010), Operating and Capital Budget FY 2010/ 11 & 2011/12, Cal Water: Water Supply and Facilities Master Plan (2005), Water Conservation and Landscape Ordinance Municipal Code 13.20, Storm Water Management Program (2005), Visalia Water Conservation Plant 2008 Master Plan, Comprehensive Annual Financial Reports CAFR 2010-2011, and the 2010 Census.

Tulare County LAFCO will not be initiating the City's SOI update at this time. The City of Visalia's SOI update should wait until after the completion of their General Plan update and after the completion of the City/County MOU process.

Attached is the Executive Summary with determinations for the updated Visalia MSR. The full version of the Draft MSR was distributed for the Commission on July 18, 2012. The full version Draft was also posted for public review on LAFCO's website: <http://www.co.tulare.ca.us/lafco/default.asp>.

On January 9, 2012 Tulare County LAFCO received via email a draft copy of comments (attached) on the Visalia MSR Update submitted by the County of Tulare. The County

### **City-County Memorandum of Understanding**

Listed below are proposed edits to the Final Visalia MSR. These proposed edits take into account the signing of the MOU between the City and the County. Proposed deletions are in strikethrough and proposed additions are in bold.

Excerpt from Section 6.2 - Conflicting Growth Boundaries

The City is currently underway with updating its General Plan and growth boundaries. The initial draft 20-year UDB is actually smaller than the existing 20-year UDB due to forecasting a smaller population growth rate and a higher housing unit density for new growth. An SOI update should wait until the completion of the City's General Plan update. ~~In addition, Visalia and other cities are currently negotiating a Memorandum of Understanding (MOU) with the County similar to the MOU that has already been signed by the City of Dinuba and the County. The identification of a unified SOI, City UDB and County UDB is one of the goals of the MOU. The City of Visalia's SOI update should also wait until this MOU process is completed.~~ However, the adoption of this MSR will

allow for the Commission to hear SOI amendment requests pursuant to GC section 56428 and Tulare County LAFCO Policy C-5.7.

**A Memorandum of Understanding (MOU) was signed by the City and the County on November 19, 2012 (Tulare County Agreement No. 25781). As part of the MOU, the following was agreed to regarding the City's and the County's 20-year UDB relationship with a LAFCo adopted SOI:**

***The County will cooperate with the City to establish a new 20-year UDB adopted by both the County and the City, which the Parties will use their best efforts to make coterminous with the SOI set by LAFCO.***

**The MOU also includes agreements regarding the County General Plan, development impact fees and provisions regarding development and land use within the County adopted UDB and Urban Area Boundary (UAB).**

Determination 6-8

The City of Visalia's SOI update should wait until after the completion of their General Plan update ~~and after the completion of the City/County MOU process.~~

**Determination 6-10**

**The City and County signed an MOU which includes the statement, "*The County will cooperate with the City to establish a new 20-year UDB adopted by both the County and the City, which the Parties will use their best efforts to make coterminous with the SOI set by LAFCO*". The MOU also included provisions regarding development, land use and impact fees within the UDB/SOI and the County UAB.**

### **Recommendation**

Adopt the updated Municipal Service Review and statement of determinations for the City of Visalia including the modified determinations which reflect the signing of the City-County MOU.

Attachments:

Updated Visalia MSR Written Determinations (Disk)

California Water Service 2010 Urban Water Management Plan Visalia (Disk)

Visalia MSR Update (Disk)

*[Please reference the CD that was included in the December Agenda packet.]*

Resolution of Adoption

**BEFORE THE LOCAL AGENCY FORMATION COMMISSION**  
**OF THE**  
**COUNTY OF TULARE, STATE OF CALIFORNIA**

In the Matter of the Adoption of the )  
Municipal Service Review Update )  
For the City of Visalia )

**RESOLUTION NO. 12-0##**

**WHEREAS**, the Commission is authorized by Government Code Section 56430 to conduct a service review of the municipal services provided in the county or other appropriate area designated by the Commission and prepare a written statement of its determinations; and

**WHEREAS**, Government Code Section 56425(g) requires the commission to review and update all spheres of influence (SOI), as necessary, every five years; and

**WHEREAS**, a service review must be completed before the Commission can consider an update to a SOI for a city or a district which provides municipal services as defined by Commission policy; and

**WHEREAS**, on March 1, 2006, the Commission adopted the first Municipal Service Review (MSR) and statement of determinations for the City of Visalia (Resolution 06-010); and

**WHEREAS**, on August 8, 2012, the Commission extended the public hearing for the Visalia MSR to the October 24, 2012 meeting; and

**WHEREAS**, on October 24 2012 this Commission heard, received, and considered testimony, comment, recommendations and reports from all persons present and desiring to be heard in this matter;

**WHEREAS**, on October 24 2012, the Commission extended the public hearing for the Visalia MSR to the December 5, 2012 meeting;

**WHEREAS**, on December 5, 2012 this Commission heard, received, and considered testimony, comment, recommendations and reports from all persons present and desiring to be heard in this matter.

**WHEREAS**, on December 5, 2012, the Commission extended the public hearing for the Visalia MSR to the February 6, 2013 meeting;

**WHEREAS**, on February 6, 2013 this Commission heard, received, and considered testimony, comment, recommendations and reports from all persons present and desiring to be heard in this matter; and

**WHEREAS**, the Visalia MSR and its determinations have been updated to allow for the Commission's consideration of a comprehensive update to the City's SOI

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**NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED as follows:**

1. The information, material and facts set forth in the report of the Executive Officer and updated MSR Report for the City of Visalia including any corrections have been received and considered.

2. The Commission has reviewed and considered the information, material and facts presented by the following persons who appeared at the public hearing and commented on the proposal:

XXXX:XXX

XXXXXXXXXX

XXXXXXXXXX

XXXXXXXXXX

3. All notices required by law have been given and all proceedings heretofore and now taken in this matter have been and now are in all respects as required by law.

4. The Commission hereby finds the updated Visalia MSR:

(a) Includes a subregion of the county appropriate for an analysis of the services to be reviewed;

(b) Contains a written statement of the Commissions' determination of the subjects required to be analyzed in an MSR, and

(c) Reviews all of the agencies that provide the service or services within the designated geographic area as set forth in LAFCO policy C-5.

5. The Municipal Service Review Report, including statement of determinations, for the City of Visalia is hereby adopted.

The foregoing resolution was adopted upon motion of Commissioner x and seconded by Commissioner x, at a regular meeting held on this 6<sup>th</sup> day of February 2013, by the following vote:

AYES:

NOES:

ABSTAIN:

PRESENT:

ABSENT:

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Ben Giuliani, Executive Officer

ce

**DRAFT COMMENTS BY RMA**

**VISALIA MUNICIPAL SERVICES REVIEW**  
**LAFCO STAFF WRITTEN DETERMINATIONS**  
**AND RMA STAFF COMMENTS**

The City of Visalia submitted a Municipal Services Review (MSR) document to the Local Agency Formation Commission (LAFCO). The item was reviewed by LAFCO on August 8, 2012. On September 19, 2012 RMA staff met with City of Visalia and LAFCO staff to review the MSR document and discuss the following items: Growth and Population, Annexations, Potential SOI Updates, Development Impact Fees, Boundary Conflicts. On November 29, 2012 RMA staff met with City of Visalia and discussed the following topics: Clarification of City/County Boundary Terminology, UAB 50 – Year Boundary Concept, Solid Waste Operations Under Review, Regional Housing Needs Allocation/Annexations, Goshen CSD City Visalia Boundary Interface, Visalia General Plan Update Schedule, LAFCO Visalia Sphere of Influence Update Schedule.

RMA staff requested a continuation of the Visalia MSR at the LAFCO meetings on August 8, 2012, October 24, 2012, and December 5, 2012 to allow additional meetings with the City of Visalia to discuss various items contained in the MSR. The City of Visalia voiced no objections to the requested continuations and LAFCO scheduled February 5, 2013 for the next meeting.

The Municipal Services Review document will form the background and basis to consider a Visalia Sphere of Influence (SOI) Amendment. This report contains information about the municipal services provided by the City of Visalia. Information has been gathered about the capacity of services, the ability to provide services, the accountability for service needs, and the efficiency of service provision. The Visalia SOI will be considered after Visalia adopts its General Plan Update. The General Plan Update adoption is expected to occur in summer 2013.

The following contains a summary of RMA Staff Recommendations. The complete list of LAFCO Staff Written Determinations with RMA Comments follows the summary of RMA Staff recommendations.

**SUMMARY OF RMA STAFF RECOMMENDATIONS**

1. Consideration of using County terminology to define Urban Boundaries UDB-20 years and UAB-50 years. The City currently uses UDB-10 years and UGB-20 years.
2. Support annexation of 10 remaining islands.
3. Support correcting any gaps or overlaps in boundaries between the City of Visalia, the Goshen CSD, and Tulare County LAFCO.

4. Support review of various unincorporated communities around Visalia for inclusion in its SOI in the next SOI update.

5. Support contemporaneous updates for City of Visalia's and Tulare's SOIs.

### **SUMMARY OF LAFCO STAFF WRITTEN DETERMINATIONS/RMA STAFF COMMENTS\***

\* Please note that the LAFCO Staff Written Determinations have been abbreviated to capture key points relative to land use and SOI related topics.

#### **1. GROWTH AND POPULATION**

##### **LAFCO Written Determinations**

- Visalia had a population of approximately 125,770 as of January 2011.
- Visalia experienced an average annual growth rate of 2.52% between 1990 and 2010.
- Using an annual average growth rate of 2.52% results in a year 2020 population of approximately 159,620 and a 2025 population of approximately 180,778 compared to the year 2020 *Proposed Visalia Draft General Plan Update Plan Land Use Element* estimate of 165,000.
- According to the City of Visalia's Draft General Plan Update, population is projected to grow at an annual rate of 2.6 percent which provides for a projected 2030 population of 207,600.

##### **RMA Staff Comments**

1. The Visalia growth rate assumption is 2.6% annual growth. The analysis and determination was prepared by Tulare County Association of Governments. The Proposed Visalia Draft General Plan Update Plan Land Use Element provides reasonable estimates of the City's population at General Plan build-out, projected to occur by year 2020.

#### **A. Planning Boundaries**

##### **LAFCO Staff Written Determinations**

- Visalia's *General Plan Land Use Element* establishes planning boundaries including a UAB, UGB, and UDB's. to help create a timeline for establishing urban development areas. The planning area (UAB) comprises all land within the city limits as well as neighboring unincorporated land, including the community of Goshen. It encompasses approximately 104 square miles or 66,640 acres. It is roughly bounded by Avenue 320 and Avenue 328 to the north; Road 158 and Mariposa Avenue to the east; Avenue 264 and Avenue 260 to the south; and Road 64 and Road 52 to the west.



- The City has urban growth policies that implement the General Plan’s phased growth strategy. The General Plan land Use Diagram establishes growth “rings” comprised of the UDB AND UAB. Urban growth policies including the following monitoring requirements:
  1. Five-year update of basic assumptions of urban growth projections including population growth, average density of urban development, infrastructure constraints, employment trends.
  2. Comprehensive update every 10 years to reflect changing community needs and values.
  3. Review of urban development boundaries based on actual population and buildout, rather than the current date-based system.
- While the City’s *General Plan Land Use Element* associates the SOI with the UAB, this is not consistent with a SOI as defined by Tulare County LAFCO. As defined by LAFCO, a SOI would be more representative of Visalia’s definition of a UGB. A City’s SOI should generally extend beyond or be coterminous with a City’s UGB, and inside a City’s UAB, which is not currently the case with the City of Visalia.

**RMA Staff Comments**

1. The City’s General Plan Update use different terms to describe their boundaries compared to the Tulare County GPU 2030 Update.

**CITY BOUNDARIES**

- UDB – 10 year boundary
- UGB – 20 year boundary
- UAB – Planning Area Boundary

**COUNTY BOUNDARIES**

- UDB – 20 year boundary
- UAB – 50 year boundary

2. The following data compares the proposed City 20-year UGB Boundary with the County Adopted 20-year UDB and Adopted Sphere of Influence (Please see attached City of Visalia Boundaries map prepared by Mark Clark):

- UGB Adds 5,231 Acres to County Adopted \*UDB
- UGB is 16,701 Acres less than the County Adopted UAB
- UGB is 1,897 Acres less than the Adopted Sphere of Influence

The proposed UGB is substantially larger than the adopted 20 year County UDB, but smaller than the adopted Sphere of Influence. **A potential area of concern is the area added North of Goshen to the UGB. This may be controversial and could impact any proposed UDB expansion efforts in Goshen related to economic development.**

\* The County Adopted UDB was approved as a GPA in 1995.

2. The County will work with the City to manage urban development within the County Adopted City Urban Development Boundary (City UDB) and the County Adopted City Urban Area Boundary (City UAB) for the City as provided through work programs as described in the County General Plan 2030 Update City Planning Framework policies set in Part 1 Chapter 2 Section 2.4. It is recognized that future legislative actions may be necessary to implement the provisions of the County General Plan 2030 Update.

## **B. Land Use Findings**

### **LAFCO Staff Written Determinations**

- The City's *General Plan Land Use Element*, in addition to the preparation of Specific Plans provides for the logical and reasonable growth and development for the City of Visalia.
- The City of Visalia is now in the process of updating the General Plan for development through 2030.
- The City plans future development through the preparation, adoption, and implementation of Specific Plans. To date, the City of Visalia has eight Specific Plans in effect.
- There is adequate land designated for residential development within the City's current UGB to accommodate residential growth through the year 2020.
- The current Urban Development Boundary (UDB) is essentially still adequate as a boundary for future growth, although minor adjustments may be appropriate.
- The Housing Element (2010) is a comprehensive update of the previous Housing Element (2005) and is valid for a 7½-year planning period (i.e., January 1, 2007 to June 30, 2014).
- The City's *General Plan Land Use Element* provides for adequate land zoned for retail commercial and office within the City's UGB.
- 15. The *Visalia Industrial Park Implementation Plan* establishes a study area, which lies totally within Visalia's UAB, but portions of which are outside the City's UDB, UGB, SOI, and city limits. The boundaries of the study area were

designed to make sure jurisdictional issues between the City and County were addressed. The City indicates a need for additional land zoned for industrial uses to accommodate future expansions of the industrial park area.

### **RMA Staff Comments**

1. There is adequate land designated for residential development within the City's current UGB to accommodate residential growth through the year 2020.

### **C. Annexations**

#### **LAFCO Staff Written Determinations**

- Since 1996, Visalia has successfully annexed 5,976.4 acres between 1996 and 2011.
- Since 2006, Visalia has annexed 480 acres intended for future industrial development, and 113 acres of mostly developed industrial land area south of Goshen Avenue, and 437 acres for various public uses and 160 acres for a future school site.
- There are 10 “islands” (developed and undeveloped) within the city limits, in which services are currently provided by Tulare County. Visalia has some infrastructure in place in many of the developed islands, anticipating ultimate connection to their services.
- California SB 1266, effective January 1, 2005, amended AB 1555 by expanding the maximum area for island annexations from 75 to 150 acres. All other provisions of the current law will remain unchanged. The sunset date is currently January 1, 2014.
- From 2003 to 2006, the City annexed 15 developed County Islands that included 392 acres of land, 3,053 people and 1,032 housing units.

### **RMA Staff Comments**

1. Support annexation of 10 remaining islands.

### **D. Potential SOI Updates**

#### **LAFCO Staff Written Determinations**

- The City's SOI should generally extend beyond or be coterminous with the City's UGB, and inside the City's UAB, which is not currently the case with the City of Visalia. At a minimum, the City's SOI should be updated to encompass

land within the City's UGB if the UGB is found to be consistent with LAFCO's SOI policies.

- Since 2006, the City's SOI has been amended in conjunction with the approximately 480-acre industrial annexations. The City indicates that a SOI amendment is still necessary for the Industrial Park and the SOI would need to be expanded by 160 acres to include additional area between Avenue 312 and 320 to reach its development potential. All industrial annexations after 2007 have remained undeveloped.

### **RMA Staff Comments**

1. Support placement of the SOI coterminous with 20-year (UDB County) (UGB City) boundary and inside the UAB 50-year boundary.

## **2. PRESENT AND PLANNED CAPACITY OF PUBLIC FACILITIES AND ADEQUACY OF PUBLIC SERVICES, INCLUDING INFRASTRUCTURE NEEDS & DEFICIENCIES**

### **A. Water**

#### **LAFCO Staff Written Determinations**

- The City of Visalia contracts with California Water Service (Cal Water), a private water service provider, to serve the City with potable water and fire protection use. The Cal Water Visalia District primarily serves the City of Visalia, the community of Goshen to the west, and several unincorporated areas adjacent to the City of Visalia. It should be noted that Cal Water is not subject to a SOI determination, and therefore has been identified as being exempt from the municipal service review requirement.
- The Cal Water Visalia District completed a comprehensive Water Supply and Facilities Master Plan (Boyle Engineering) in February 2005. The master plan has a study area consistent with the City's UGB.
- In August 2005, the City adopted a groundwater overdraft mitigation ordinance which assesses impact fees upon new development and a volumetric fee upon existing urban water supplies to fund activities and projects to mitigate the impacts of groundwater overdraft. These efforts demonstrate the City's desire to continue to implement long term water supply solutions even though they are not the direct supplier of domestic water to City residents.

### **RMA Staff Comments**

1. No comments, planned capacity is through the 20 year time horizon.

## **B. Drainage Infrastructure**

### **LAFCO Staff Written Determinations**

- The City has a Master Planned storm drain system that is anticipated to meet drainage infrastructure needs through the build-out of the General Plan. The Storm Water Master Plan and Management Program addresses future facility expansion needs to accommodate growth within the City's UGB.

### **RMA Staff Comments**

1. No comments, planned capacity is through the 20 year time horizon.

## **C. Wastewater Collection, Treatment and Disposal**

### **LAFCO Staff Written Determinations**

- 11. The City continues the process of upgrading and replacing sewer collection pipelines through the implementation of the Sewer System Master Plan. The Sewer System Master Plan is a long range plan that identifies trunk lines that would ultimately serve the City's UAB.
- 12. The City has a comprehensive capital improvement program that appropriates funds to construct sewer infrastructure projects on an annual basis.
- 13. The Sewer System Master Plan indicates that many trunk sewers are nearing capacity, and the maintenance of these lines is essential to provide the designed flow capacities. The Master Plan recommends that the City develop a sanitary sewer maintenance program that includes cleaning pipes on a regular basis.
- 14. The City continues to upgrade the wastewater treatment plant through the implementation of the Wastewater Treatment Master Plan Update. The City has budgeted \$1,000,000 annually to carryout upgrades associated with NPDES discharge regulations. Continual upgrades of the wastewater treatment plant will be necessary to accommodate future growth.
- 15. Improvements to the VWCP have increased the plant's hydraulic capacity to 22 MGD, the BOD5 capacity to 103,229 lbs/day, and the SS capacity to 148,068 lbs/day. The current permit in which the VWCP is operating under, which prescribes a maximum average daily dry weather flow of 16 MGD, expired on March 1, 2002. The City has submitted a renewal application for the NPDES permit, which is pending action from the RWQCB. The City has been directed by the RWQCB to continue operating under the expired permit until a new permit is issued by the Board. The City anticipates that the renewed permit will allow for a maximum flow of 22 MGD.

## **RMA Staff Comments**

1. No comments, planned capacity is through the UAB year time horizon.

## **D. Streets and Roads**

### **LAFCO Staff Written Determinations**

- The City continues the process of upgrading and replacing roads and streets through the implementation of its comprehensive capital improvement program that appropriates funds to construct transportation infrastructure projects on an annual basis. Currently, the City has four capital funds that are allocated to annual transportation improvements.
- The City coordinates closely with the Tulare County Association of Governments (TCAG) and Caltrans to obtain funding for transportation improvement projects.
- The City's General Plan Circulation Element provides a comprehensive policy base for improving the City's transportation system.
- The City Council recently adopted a major policy change in the way that the City's arterial and collector streets are funded and constructed. Under the new policy, the City will now have the financial responsibility for all portions of arterial and collector streets. If these streets are built by developers, they will be reimbursed the entire cost of construction. In exchange, the City significantly raised its traffic impact fees for new development. The City anticipates that the new policy for constructing streets will provide the funding capability to respond to the public's major traffic concerns in a more timely fashion.

## **RMA Staff Comments**

1. No comments. Visalia participates in the TCAG Regional Traffic Impact fee program.

## **E. Fire and Police Protection Services**

### **LAFCO Staff Written Determinations**

- The City of Visalia operates six fire stations of which five are staffed 24 hours a day, 365 days a year, and responded to approximately 11,000 calls in 2011. There are six fire companies, two aerial ladder trucks and four engines that cover an area of 34 square miles. All fire companies are staffed with a minimum of three personnel with one member being a paramedic. The Visalia Fire

department staffs two Regional Specialty Teams- including Cal EMA Type I Haz Mat Response Team. There are a total of 72 full-time employees.

- The Police Department has 143 allocated positions, as well as 11 reserve-sworn officers, 64 allocated civilian positions, and 75 volunteers. Operations are supported by units such as Communications, Records, and Investigations.
- The voters approved a ¼-cent sales tax on March 2, 2004 (Measure T). No sales tax funds can replace General Fund dollars budgeted for normal operations at the previous year's service level unless the City Council declares an economic emergency by a 4/5ths vote. The distribution of Measure T funds is 60% Police Department and 40% Fire Department.
- 27. The City requires developers to pay public safety impact fees prior to the issuance of any building permits. The fees vary based upon type of service (police and fire), and proposed land use. The fees collected are allocated to fund capital improvements to police and fire protection facilities.

#### **RMA Staff Comments**

1. No comments.

#### **F. Solid Waste**

##### **LAFCO Staff Written Determinations**

- The Consolidated Waste Management Authority is a joint powers authority that is recognized by the State and collectively manages the solid waste recycling and diversion activities for eight local area members including Tulare County, Tulare, Visalia, Dinuba, Exeter, Farmersville, Lindsay and Porterville. The Consolidated Waste Management Authority has continued to improve its diversion rate as established by the State. The State recently changed its diversion calculation method from a percentage of waste diverted from the landfill to a calculation of pounds per person per day (PPD) that goes to the landfills. Most recent data shows that the CWMA has a base rate to achieve of 6.2 PPD. CWMA has been able to successfully achieve an annual PPD significantly lower than the benchmark established by the State. In 2008 the CWMA achieved a diversion rate of 5.2 PPD, and in 2009 lowered it even further to 4.4PPD.

#### **RMA Staff Comments**

1. No comments.

### **3. FINANCIAL ABILITY TO PROVIDE SERVICES**

- The City prepares its annual budget on a two-year cycle, thereby reducing administrative costs associated with preparing comprehensive budgets on an annual basis. The two-year budget includes a mid-cycle review in June and two mid-year reviews each January.

#### **RMA Staff Comments**

1. No comments.

### **4. STATUS OF, AND OPPORTUNITIES FOR, COST AVOIDANCE AND SHARED FACILITIES**

#### **A. Fiscal Structure**

##### **LAFCO Staff Written Determinations**

- The City's two-year budget cycle provides for an excellent short-term fiscal planning tool while reducing the amount of time and resources associated with the preparation of annual budgets.
- The City has worked to have development pay for itself by instituting infrastructure impact fees. These impact fees pay for necessary infrastructure which supports new development. The City also implemented a number of maintenance fees to pay for the ongoing maintenance necessary for common residential landscaping. The dramatic decline in impact fees parallels the decline in construction activity. In this case, the City will slow down the pace of capital improvements to match the new level of revenues and growth.

#### **RMA Staff Comments**

1. No comments.

#### **B. Purchasing Policy**

##### **LAFCO Staff Written Determinations**

1. The City has a well defined purchasing policy that promotes healthy competition, and guides the City in obtaining cost effective quality services.

#### **RMA Staff Comments**



1. No comments.

### C. Fee Structure

#### LAFCO Staff Written Determinations

- Rates and fees for services are established and updated using the City’s budget process, ordinances and other regulations.
- There is no evidence suggesting that the City would not be able to provide services to areas within the SOI and UGB.

#### RMA Staff Comments

1. No comment.

### D. Current Facilities Sharing Activities

#### LAFCO Staff Written Determinations

- The City continues to look for opportunities to construct joint use projects, and opportunities for shared services. The City has demonstrated this effort with the completion of many projects in cooperation with the County, and by sharing services with local and surrounding jurisdictions.
- The City should continue to collaborate with other agencies to facilitate exceptional and efficient service, maintain and expand working relationships, and look for new opportunities to work with other agencies such as Kaweah Delta Water Conservation District, Cal Water and the County in ways that support the City’s planning goals.

#### RMA Staff Comments

1. No comment.

### E. Future Opportunities

#### LAFCO Staff Written Determinations

- **The City has several future opportunities to share services and/or facilities in the future, including but not limited to: groundwater recharge efforts, recreational facilities, and the sharing of office buildings.**

#### RMA Staff Comments

1. No comments.

**5. ACCOUNTABILITY FOR COMMUNITY SERVICE NEEDS, INCLUDING GOVERNMENT STRUCTURE AND OPERATIONAL EFFICIENCIES**

**A. Development within SOI Areas**

**LAFCO Staff Written Determinations**

- Since development of properties within the SOI/UGB generally relies on Master Planned infrastructure available from the City, it is logical for the City to assume the lead in planning for these sites, consistent with the City of Visalia General Plan.
- Annexation of County islands into the City would create a more defined City Limit boundary while meeting or exceeding the current level of services provided by the County.
- Coordinated infrastructure plans, for development within the SOI/UGB areas, submitted with specific annexation requests would create a checks and balance system for incorporating lands into the City while promoting improvements to impacted adjacent County land.
- Tulare County LAFCO has adopted specific policies for reviewing proposals for a change in organization, reorganization, incorporations, dissolution and other proposals processed by Tulare County LAFCO, including annexations, and SOI amendment proposals.

**RMA Staff Comments**

1. Support annexation of 10 remaining islands.

2. County/City MOU process will provide coordination for future infrastructure planning and construction. The MOU and more specific agreements between the City and County address the reciprocal collection of development impact fees, the sharing of transient occupancy tax collected within the City, and the sharing of additional sales taxes by the City with the County would off set the impacts of future development within the City on County facilities and services and off set the impacts of development within the County on City facilities and services.

**B. Boundary Conflicts**

**LAFCO Staff Written Determinations**

- The City of Visalia governmental structure could be affected by the potential overlapping of boundaries with the Goshen Community Services District (which provides sanitary sewer collection service in the Goshen Community).
- The City of Visalia has a Wastewater Service Agreement with the Goshen CSD, which sets forth specific criteria with regard to wastewater collection and treatment services within the boundary of each agency.
- The agreement does not appear to address wastewater collection services within the Goshen CSD SOI, which in some areas overlaps with the City of Visalia SOI. Boundary conflicts and service provisions would ultimately be resolved between the City of Visalia, the Goshen CSD, and Tulare County LAFCO.

### **RMA Staff Comments**

1. Support correcting any gaps or overlaps in boundaries between the City of Visalia, the Goshen CSD, and Tulare County LAFCO.

## **C. Evaluation of Management Efficiencies**

### **LAFCO Staff Written Determinations**

- The City has an effective organizational structure that is readily available to respond to the needs of the community.
- There is no evidence indicating that the City’s current management structure would not be able to assume services within the SOI/UGB areas, and/or continue to assist other agencies through mutual aid agreements.
- The City should ensure that services can be efficiently provided in the SOI/UGB areas through the preparation of master service plans that include funding mechanisms for infrastructure that will ultimately serve the SOI/UGB areas.
- As a part of the budget process, the City evaluates the accomplishments during the previous budget cycle, and outlines specific objectives for the following budget cycle. This is done for each department at the division and/or bureau level.

### **RMA Staff Comments**

1. No Comments.

## **D. Local Accountability and Governance**

### **LAFCO Staff Written Determinations**

- The City continues to make reasonable efforts to maintain public involvement regarding land use and development projects in the community. The City accomplishes this through regular City Council meetings, newsletters, and website postings.
- The City maintains an excellent comprehensive website, which provides a means to keep the public informed on local events, current City projects, department budgets, recreational activities, and other activities occurring in the City.
- The City conducts public workshops to keep the public involved with local planning issues including land use, housing, circulation, and other issues key to the development and growth of Visalia.
- The City's budget preparation process gives residents the opportunity to review the services the City is providing, and the cost of those services. This type of accountability helps the City to identify services that are operating efficiently and areas where improvement may be needed within the organization.

**6. ANY OTHER MATTER RELATED TO EFFECTIVE OR EFFICIENT SERVICE DELIVERY, AS REQUIRED BY COMMISSION POLICY**

**A. Disadvantaged and Other Developed Unincorporated Communities**

**LAFCO Staff Written Determinations**

- There are five unincorporated communities within or adjacent to the existing City SOI (Goshen, Patterson Tract area, Oak Ranch, K Street Island and Sierra View), one unincorporated community outside the SOI but within the City UDB (Tract 92) and one unincorporated community outside the SOI and UDB that is connected to the same domestic water system that serves Visalia (Tract 396). Patterson Tract (Tract 34), Tract 359, Goshen, K Street Island and Tract 92 are disadvantaged.
- All of the unincorporated communities are either served by CalWater's Visalia water system or by a Community Services District, except for Tract 111 which is served by Sunrise Mutual Water Company.
- All of the unincorporated communities' sewer services are individual septic systems with the exception of Goshen, which is served, by its CSD's sewer system and City's treatment facility.

- The City and the County have a mutual-aid agreement for fire protection services with five City fire stations and three County fire stations in the Visalia area.
- The inclusion of the various unincorporated communities around Visalia in its SOI shall be reviewed in the next SOI update.

**RMA Staff Comments**

1. Support review of various unincorporated communities around Visalia for inclusion in its SOI in the next SOI update.

**B. Conflicting Growth Boundaries**

**LAFCO Staff Written Determinations**

- LAFCO shall determine the SOI for the City of Visalia pursuant to State law and Tulare County LAFCO Policy C-5.
- There are numerous inconsistencies between the current SOI, City UDB and County UDB.
- The City of Visalia’s SOI update should wait until after the completion of their General Plan update and after the completion of the City/County MOU process.
- Due to the relationship of the City of Visalia’s and Tulare’s SOIs, the SOI updates for both of the cities should be completed contemporaneously.

**RMA Staff Comments**

1. Consider using County terminology to define Urban Boundaries UDB-20 years and UAB-50 years. The City currently uses UDB-10 years and UGB-20 years.

2. Support correcting any gaps or overlaps in boundaries between the City of Visalia, the Goshen CSD, and Tulare County LAFCO.

3. Support contemporaneous updates for City of Visalia’s and Tulare’s SOIs.

**NEXT STEPS:**

1. Finalize RMA Staff Recommendations.
2. Meet with Visalia City Staff to discuss RMA Staff Recommendations during the week of January 7<sup>th</sup> or 14<sup>th</sup>.
3. Determine response to Visalia’s MSR proposal.
4. Prepare and send response to LAFCO Executive Director by January 23, 2013.
5. LAFCO Meeting February 6, 2013.



# **TULARE COUNTY LOCAL AGENCY FORMATION COMMISSION**

210 N. Church St., Suite B, Visalia, CA 93291 Phone: (559) 623-0450 FAX: (559) 733-6720

COMMISSIONERS:  
Cameron Hamilton, Chair  
Steve Worthley, V-Chair  
Rudy Mendoza  
Allen Ishida  
Juliet Allen

February 6, 2013

ALTERNATES:  
Mike Ennis  
Dennis Mederos  
Janet Hinesly

TO: LAFCO Commissioners, Alternates, Counsel

FROM: Ben Giuliani, Executive Officer

EXECUTIVE OFFICER:  
Ben Giuliani

SUBJECT: Termination of LAFCO Case 1442-D-60, City of Dinuba  
Reorganization 2007-02 (Margosian)

## **Background**

Case 1442-D-60 was conditionally approved by the Commission on April 1, 2009 (Res. 09-003). The reorganization consisted of the annexation of 76.79 acres of agricultural into the City of Dinuba for future light industrial uses. The site was also to be detached from County Service Area #1 and Kings River Conservation District. The entire site is under a Williamson Act contract. Because of the Williamson Act contract, the approval included the following condition:

*The City of Dinuba shall record a Certificate of Contract Termination for contract No. 14039 pursuant to GC 51243.5 (h) with the County Recorder at the same time as LAFCO files a Certificate of Completion pursuant to GC 57203. The Certificate of Contract Termination shall include a legal description of the land for which the City terminates the contract.*

## **Discussion**

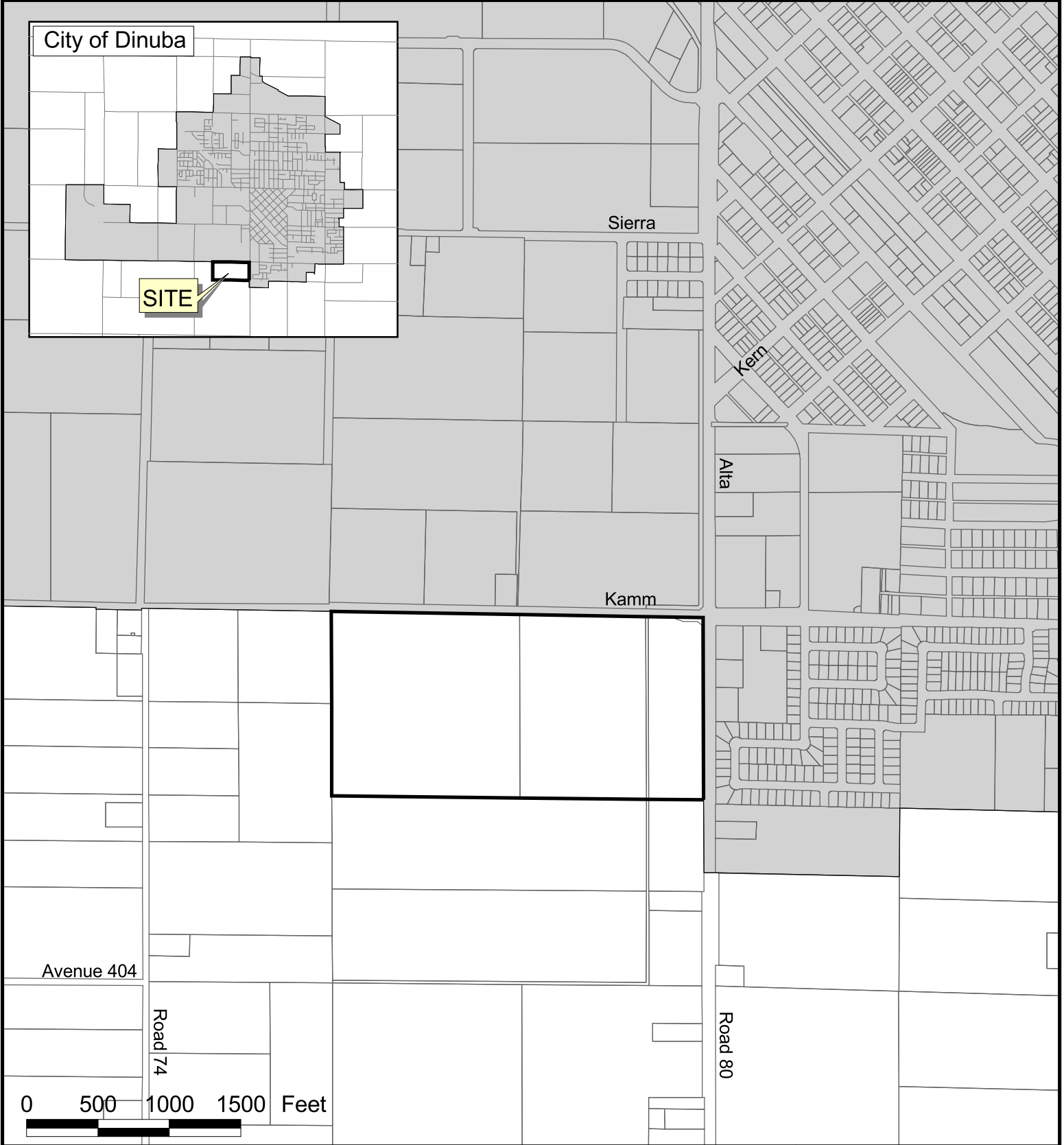
The Certificate of Completion was never recorded for this case since the City had never submitted a Certificate of Contract Termination. The City has recently submitted a letter (attached) requesting that the reorganization be withdrawn. The property owners now wish to remain outside of the City and to keep their Williamson Act contract. Changes of organization may be terminated after Commission approval and before the recording of the Certificate of Completion pursuant to GC section 57001.

## **Recommendation**

Adopt the attached resolution, terminating Case 1442-D-60.

### Attachments:

Site Location  
Dinuba Letter  
Resolution



City of Dinuba

SITE

Sierra

Kern

Alta




Kamm

Avenue 404

Road 74

Road 80

0 500 1000 1500 Feet

-  SITE
-  CITY
-  PARCELS

CITY OF DINUBA  
 REORGANIZATION 2007-02  
 (MARGOSIAN)  
 LAFCO CASE 1442-D-60  
 SITE LOCATION





City Manager's Office  
559/591-5904

Development Services  
559/591-5906

Parks & Community Services  
559/591-5940

City Attorney  
559/437-1770

Public Works Services  
559/591-5924

Fire/Ambulance Services  
559/591-5931

Administrative Services  
559/591-5900

Engineering Services  
559/591-5906

Police Services  
559/591-5914

December 6, 2012

Mr. Ben Giuliani,  
Executive Officer  
Tulare County LAFCO  
210 N. Church, Ste. B  
Visalia, CA 93291

RE: City of Dinuba Application No. 2007-02 (Margosian), Annexation Request

Dear Mr. Giuliani,

On November 7, 2012 the City of Dinuba received a letter from the owners of the properties listed as 40745 Road 80 (APN: 030-010-006, 041), in Dinuba. The owners informed City staff that they would be withdrawing Application No. 2007-02, a proposal to annex the aforementioned properties into the City of Dinuba. The owners stated their desire to keep said properties within an existing Williamson Act contract, thereby keeping the property tax rates of the site at their present levels.

Accordingly, the City of Dinuba requests the withdrawal of Application No. 2007-02 from consideration by Tulare County LAFCO. The annexation request will no longer be pursued by the City of Dinuba.

If you have any questions about the above, please contact me at (559) 591-5924, ext. 104 or e-mail [ccarrillo@dinuba.ca.gov](mailto:ccarrillo@dinuba.ca.gov).

Regards,

Cristobal Carrillo,  
Planner I



**BEFORE THE LOCAL AGENCY FORMATION COMMISSION**  
**OF THE**  
**COUNTY OF TULARE, STATE OF CALIFORNIA**

In the Matter of Terminating Case            )  
No. 1442-D-60, City of Dinuba                )  
Reorganization No. 2007-02, Margosian )

**RESOLUTION NO. 13-00#**

**WHEREAS**, this Commission conditionally approved Case No. 1442-D-60, City of Dinuba Reorganization No. 2007-02 on April 1, 2009 (Resolution 2009-003); and

**WHEREAS**, the reorganization consisted of the annexation of 76.79 acres of agricultural land for future light industrial uses into the City of Dinuba and detachment from County Service Area #1 and Kings River Conservation District; and

**WHEREAS**, the approval was conditioned on the City of Dinuba submitting a Certificate of Contract Termination for the Williamson Act contract that covered the entire reorganization area; and

**WHEREAS**, a Certificate of Completion was never recorded because the Certificate of Contract Termination had not been submitted; and

**WHEREAS**, the City of Dinuba submitted a letter on December 6, 2012 requesting that the reorganization be withdrawn because the property owner wants to remain outside of the City and retain the Williamson Act contract.

**NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED as follows:**

Case 1442-D-60 is hereby terminated and the case file is closed. Any future change of organization involving this area would need to be submitted as a new application.

The foregoing resolution was adopted upon motion of Member x, and seconded by Member x, at a regular meeting held on this 6th day of February, 2013, by the following vote:

AYES:

NOES:

ABSTAIN:

PRESENT:

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Ben Giuliani, Executive Officer

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# **TULARE COUNTY LOCAL AGENCY FORMATION COMMISSION**

210 N. Church St., Suite B, Visalia, CA 93291 Phone: (559) 623-0450 FAX: (559) 733-6720

COMMISSIONERS:  
*Cameron Hamilton, Chair  
Steve Worthley, V-Chair  
Rudy Mendoza  
Allen Ishida  
Juliet Allen*

ALTERNATES:  
*Mike Ennis  
Dennis Mederos  
Janet Hinesly*

EXECUTIVE OFFICER:  
*Ben Giuliani*

February 6, 2013

TO: LAFCO Commissioners, Alternates, Counsel

FROM: Ben Giuliani, Executive Officer

SUBJECT: Proposed Amendment to Policy C-9 (AB 1555 Island Annexation Policy)

## **Background**

The Commission adopted Policy C-9 (AB 1555 Island Annexation Policy) on February 2, 2005 to address county island annexation provisions that were amended into Government Code through AB 1555 (Longville). These provisions included what is commonly known as the “stream-lined island annexation process” that allows for islands which meet certain requirements to be annexed without protest or vote by landowners or registered voters. A subsection was included in this policy that permitted cities to split islands of greater than 150 acres into smaller islands to take advantage of the stream-lined process as long as all the other requirements were met.

## **Discussion**

The Attorney General’s Office released an opinion (attached) on June 1, 2012 stating that county islands of greater than 150 acres may not be split into smaller islands to take advantage of the stream-lined island annexation process. Attached for review is the draft amendment to Policy C-9 which would remove the provision (9.3(A)(2)) that allows for the splitting of islands greater than 150 acres. This change in policy would affect only the City of Porterville. In Tulare County, Porterville has the only developed island (East Porterville) that is greater than 150 acres.

This draft policy was distributed to city and County staff for review on January 14<sup>th</sup>. To date, no comments have been received. Staff will bring this policy back to the Commission for action at their March 6<sup>th</sup> meeting.

## **Attachments:**

Attorney General Opinion  
Proposed Amended Policy C-9

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL  
State of California

KAMALA D. HARRIS  
Attorney General

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OPINION	:	No. 10-902
	:	
of	:	June 1, 2012
	:	
KAMALA D. HARRIS	:	
Attorney General	:	
	:	
MARC J. NOLAN	:	
Deputy Attorney General	:	
	:	

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THE HONORABLE GLORIA NEGRETE McLEOD, MEMBER OF THE STATE SENATE, has requested an opinion on the following questions:

1. What constitutes an “island” within the meaning of Government Code section 56375.3, pertaining to the annexation of surrounded or substantially surrounded islands of unincorporated territory?

2. Does Government Code section 56375.3 require the annexation of an “entire island” or “entire unincorporated island” as set forth, respectively, in subdivisions (b)(1) and (b)(2) of that statute?

3. May a Local Agency Formation Commission split up an unincorporated island that exceeds 150 acres into smaller parcels in order to utilize the streamlined “island annexation” procedures set forth in Government Code section 56375.3 and thereby avoid the landowner/voter protest proceedings that would otherwise be required?

## CONCLUSIONS

1. For purposes of Government Code section 56375.3, an “island” is an area of unincorporated territory that is (1) completely surrounded, or substantially surrounded—that is, surrounded to a large degree, or in the main—either by the city to which annexation is proposed or by the city and a county boundary or the Pacific Ocean, or (2) completely surrounded by the city to which annexation is proposed and adjacent cities. An “island” may not be a part of another island that is surrounded or substantially surrounded in this same manner.

2. Government Code section 56375.3 requires the annexation of an “entire island” or “entire unincorporated island” as set forth, respectively, in subdivisions (b)(1) and (b)(2) of that statute.

3. A Local Agency Formation Commission may not split up an unincorporated island that exceeds 150 acres into smaller segments of 150 acres or less in order to utilize the streamlined “island annexation” procedures set forth in Government Code section 56375.3 and thereby avoid the landowner/voter protest proceedings that would otherwise be required.

## ANALYSIS

Under the Cortese-Knox-Hertzberg Local Government Act of 2000 (Act),<sup>1</sup> a Local Agency Formation Commission (LAFCO) exists in each county<sup>2</sup> “to encourage orderly growth and development and the assessment of local community services needs.”<sup>3</sup> Among its broad powers, a LAFCO is authorized to “review and approve or disapprove with or without amendment, wholly, partially, or conditionally, proposals for changes of [local agency] organization or reorganization, consistent with [its] written policies, procedures, and guidelines . . . .”<sup>4</sup> Annexation<sup>5</sup> of unincorporated territory to a city is one type of “change of organization.”<sup>6</sup>

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<sup>1</sup> Govt. Code §§ 56000-57550. Further references to the Government Code are by section number only.

<sup>2</sup> §§ 56325-56337.

<sup>3</sup> See *Antelope Valley-East Kern Water Agency v. Local Agency Formation Commn.*, 204 Cal. App. 3d 990, 994 (1988); see also § 56001.

<sup>4</sup> § 56735(a)(1).

<sup>5</sup> “Annexation” means the annexation, inclusion, attachment, or addition of territory to a city or district. § 56017.

<sup>6</sup> § 56021(c); *Fig Garden Park No. 2 Assn. v. Local Agency Formation Commn.*, 162

A proposal for annexation of unincorporated territory to a city is initiated either by the filing of a petition signed by the requisite number of persons in the affected territory,<sup>7</sup> or by the filing of a resolution by the city council proposing the annexation. The petition or resolution is part of an annexation application filed with the county LAFCO.<sup>8</sup> When it receives an application, the LAFCO conducts an initial public hearing on the matter, after which it may approve or disapprove the proposal, with or without conditions.<sup>9</sup> Generally speaking, if the LAFCO gives its initial approval to a proposed annexation, it then conducts another proceeding to measure any protests from residents or landowners within the affected territory.<sup>10</sup> Ultimately, if the LAFCO approves the proposal, and the proposal is not subsequently defeated either by a sufficient number of written protests or by a majority of votes cast in a confirmation election,<sup>11</sup> the LAFCO will record a certificate of completion that sets forth the effective date of the annexation.<sup>12</sup>

Section 56375.3, which is the focus of our inquiry, contains a limited exception to this general sequence of events. It provides a streamlined procedure whereby a LAFCO may approve a proposed annexation “and waive protest proceedings [] entirely” if the annexation proposal is initiated by a resolution of the annexing city between January 1, 2000, and January 1, 2014,<sup>13</sup> and the LAFCO determines that the area to be annexed is an *island* of territory that meets certain requirements.<sup>14</sup> The legitimacy of some so-called “island annexations” has been questioned on the ground that some LAFCOs are said to have misinterpreted the statutory “island” requirements and, as a result, deprived affected residents and landowners of their legal right to protest and vote upon annexation proposals in situations where the territory in question does not qualify as an “island.”

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Cal. App. 3d 336, 347 (1984).

<sup>7</sup> “‘Affected territory’ means any territory for which a change of organization or reorganization is proposed or ordered.” § 56015.

<sup>8</sup> §§ 56650-56653, 56700.

<sup>9</sup> §§ 56828, 56880.

<sup>10</sup> §§ 57000, 57002, 57008, 57025, 57050-57052.

<sup>11</sup> §§ 57075, 57078.

<sup>12</sup> §§ 57200-57203.

<sup>13</sup> § 56375.3(a)(1).

<sup>14</sup> § 56375.3(b).

Of specific interest to the requestor of this opinion are the requirements that the territory in question

- “does not exceed 150 acres in area, and that area constitutes the entire island,”<sup>15</sup>
- “constitutes an entire unincorporated island located within the limits of a city,”<sup>16</sup> and
- is either “[s]urrounded, or substantially surrounded, by the city to which annexation is proposed or by the city and a county boundary or the Pacific Ocean,” or “[s]urrounded by the city to which annexation is proposed and adjacent cities.”<sup>17</sup>

In analyzing the predecessor statute of what is now section 56375.3,<sup>18</sup> the Court of Appeal in *Fig Garden Park No. 2 Association v. LAFCO* recognized that “there is a strong governmental interest in avoiding pockets of unincorporated territory.”<sup>19</sup> Nonetheless, the court observed that the “entire island” concept [now set forth in section 56375.3] “was introduced into the statute to prevent piecemeal annexation of large

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<sup>15</sup> § 56375.3(b)(1).

<sup>16</sup> § 56375.3(b)(2). To satisfy this provision, the territory in question may also “constitute [] a reorganization containing a number of individual unincorporated islands.” *Id.* Our analysis, however, is limited to the context of a single island of unincorporated territory.

<sup>17</sup> § 56375.3(b)(3)(A), (B). For purposes of our analysis, we assume a case in which there is no dispute over whether a given territory meets the other requirements of section 56375.3(b). *See* § 56375.3(b)(4) (territory must be “substantially developed or developing”), (b)(5) (territory is “not prime agricultural land, . . .”) & (b)(6) (territory “will benefit from the change of organization . . . or is receiving benefits from the annexing city”). We further assume there is no claim that a given territory is expressly made ineligible for the protest-waiving procedure. § 56375.3(c); *see* Health & Safety Code § 33492.41(e) (applicable to certain territories in the Inland Valley Redevelopment Project Area).

<sup>18</sup> *See* former § 35150(f).

<sup>19</sup> *Fig Garden Park*, 162 Cal. App. 3d at 342; *see Weber v. City Council*, 9 Cal. 3d 950, 965 (1973)



surrounded or substantially surrounded areas, thus prohibiting the circumvention of the 100-acre [currently 150-acre] limitation and/or the annexation of smaller areas within larger substantially surrounded areas.’’<sup>20</sup>

A few years earlier, we too had concluded that the “entire island” requirement of section 56375.3’s predecessor statute demonstrated a legislative intent to preclude “the annexation of a *part of* an island under this statutory provision.’’<sup>21</sup>

It would be unreasonable to conclude that the statute’s 100-acre [now 150-acre] limitation is without significant meaning. If a proposed area of annexation could constitute a portion of a larger territory, the . . . limitation could be easily circumvented by separate annexation proceedings. We do not believe that the Legislature intended piecemeal annexation as a means to thwart citizen participation in the decision making process.<sup>22</sup>

As the current questions indicate, there continues to be concern that the streamlined island annexation procedures not be used (or misused) in a way that would deprive residents and landowners of their statutory rights<sup>23</sup> to protest and vote upon an annexation proposal. With this background in mind, we turn to the questions posed in this request.

## 1. Meaning of “island”

The first question is: what does the term “island” mean for purposes of section 56375.3? Although numerous terms are defined in the Act,<sup>24</sup> “island” is not one of them. The most apt dictionary definition<sup>25</sup> is “something resembling an island by its isolated,

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<sup>20</sup> *Fig Garden Park*, 162 Cal. App. 3d at 343.

<sup>21</sup> 63 Ops.Cal.Atty.Gen. 343, 345 (1980) (emphasis in original) (analyzing former § 35150(f)).

<sup>22</sup> *Id.*

<sup>23</sup> Courts have consistently rejected the suggestion that residents and landowners have a *constitutionally*-protected right to protest a proposed annexation. *Weber v. City Council*, 9 Cal. 3d at 958-965; *Fig Garden Park*, 162 Cal. App. 3d at 348; *I.S.L.E. v. Co. of Santa Clara*, 147 Cal. App. 3d 72, 79-80 (1983); *Beck v. Co. of San Mateo*, 154 Cal. App. 3d 374, 378-381 (1984); *Scuri v. Bd. of Supervisors of Ventura Co.*, 134 Cal. App. 3d 400, 404-406 (1982).

<sup>24</sup> *See* §§ 56010-56081.

<sup>25</sup> Where the statutory scheme does not provide a definition, the general rule in

surrounded, or sequestered position.”<sup>26</sup> This definition fits well with the statute’s requirement that the territory be either “[s]urrounded, or substantially surrounded, by the city to which annexation is proposed or by the city and a county boundary or the Pacific Ocean,” or “[s]urrounded by the city to which annexation is proposed and adjacent cities.”<sup>27</sup> Unlike other provisions of the statute, which focus on an island’s maximum acreage<sup>28</sup> or degree of development,<sup>29</sup> this provision sets forth an implied definition of what features are essential to constitute an island in the first place.

The *Fig Garden Park* court also concluded that these descriptive elements constituted the “determining factor” in “initially determining the existence and parameters of an island.”<sup>30</sup> If a territory is found to be “surrounded” or “substantially surrounded” in the manner described, then “that fixes the dimension and existence of the island.”<sup>31</sup> One of a LAFCO’s responsibilities is to “review the boundaries of the territory involved in any proposal with respect to the definiteness and certainty of those boundaries, the nonconformance of proposed boundaries with lines of assessment or ownership, and other similar matters affecting the proposed boundaries.”<sup>32</sup> If the LAFCO determines that an area constitutes an “island,” and if that determination results in an order for annexation, neither the initial determination nor the resulting order may be set aside in the absence of fraud or “a prejudicial abuse of discretion”<sup>33</sup> (meaning that the LAFCO’s “determination or decision is not supported by substantial evidence in light of the whole record.”)<sup>34</sup>

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scrutinizing the words of a statute is to “give them their usual, ordinary meaning, which in turn may be obtained by referring to a dictionary.” *Smith v. Selma Community Hosp.*, 188 Cal. App. 4th 1, 30 (2010).

<sup>26</sup> *Webster’s New International Unabridged Dictionary* 1198 (3d ed., Merriam-Webster 2002); see also *Schaeffer v. Co. of Santa Clara*, 155 Cal. App. 3d 901, 903 (1984) (referring to dictionary definition of “island”).

<sup>27</sup> § 56375.3(b)(3).

<sup>28</sup> § 56375.3(b)(1).

<sup>29</sup> § 56375.3(b)(4).

<sup>30</sup> *Fig Garden Park No. 2 Assn.*, 162 Cal. App. 3d at 343 (analyzing former § 35150(f)).

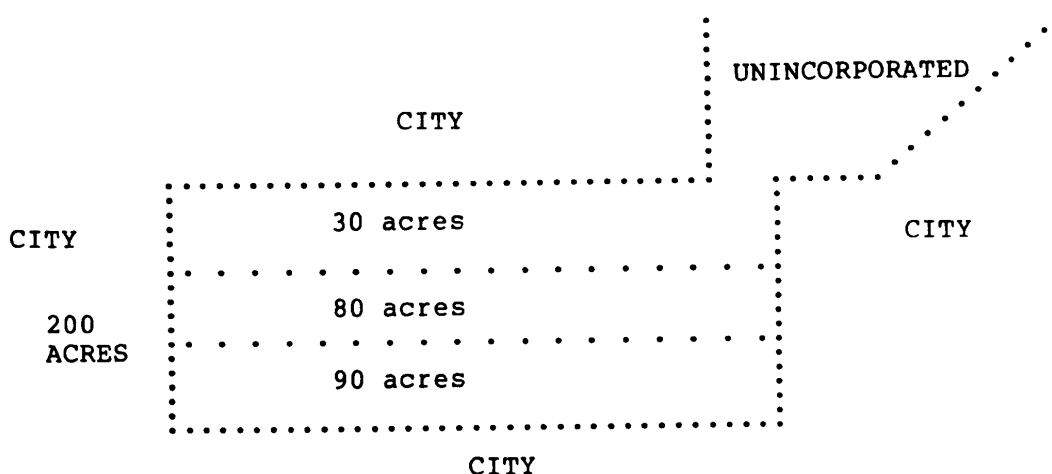
<sup>31</sup> *Id.*

<sup>32</sup> § 56375(l).

<sup>33</sup> § 56107(c); see *Simi Valley Recreation & Park Dist. v. Local Agency Formation Commn. of Ventura Co.*, 51 Cal. App. 3d 648, 685-687 (1975).

<sup>34</sup> § 56107(c).

That said, more guidance may be helpful in describing what qualifies as “surrounded” or substantially “surrounded” territory for purposes of determining the existence of an island. To better understand these terms, we find it helpful to refer to a diagram set out in the *Fig Garden Park* opinion:



With reference to this diagram, the court explained that:

...in the above example, the outer perimeter of the 200-acre unincorporated parcel is substantially surrounded by the city. If the parcel were 100 acres or less, it would be eligible for a [former] section 35150(f) annexation. Since it is not 100 acres or less, it is not eligible. The concept would be violated if the City attempted to break up the 200 acres into smaller parcels 100 acres or less, thus otherwise qualifying the individual parcels for annexation within the 100-acre limitation. Such a procedure would tend to circumvent the 100-acre limitation and the “entire island” concept would prohibit it.<sup>35</sup>

The court performed this analysis with “the purpose of reconciling and harmonizing the two terms ‘entire island’ and ‘substantially surrounded’ area in an effort to give effect and meaning to both, consistent with the general legislative purpose.”<sup>36</sup> We note, and agree with, the court’s implicit determination that a territory may be an “island” even if it is not *completely* surrounded (although a completely surrounded territory would

<sup>35</sup> *Fig Garden Park*, 162 Cal. App. 3d at 343. Recall under former section 35150(f), the maximum acreage permitted for an “island annexation” was 100 acres. Under section 56375.3(b)(1), it is now 150 acres.

<sup>36</sup> *Id.* at 342-343.

certainly qualify as an island as well). Indeed, we said as much in our 1980 opinion.<sup>37</sup> We believe that any other conclusion would render superfluous the phrase “or substantially surrounded,” and we are not free to construe a statute in a way that would render any part of it meaningless.<sup>38</sup>

In turn, the examples contained in published cases provide guidance as to the meaning of “substantially surrounded.” In *Fig Garden Park*, the annexing city bordered along 97 percent of the total perimeter of the substantially surrounded island that the court found to exist, with a 230-foot gap leading into “county property extending for miles.”<sup>39</sup> In *Scuri v. Board of Supervisors*, upon which the *Fig Garden Court* partially relied, territories surrounded by the annexing city along 79.8 percent, 89.13 percent, and 82.4 percent of their perimeters were each found to be substantially surrounded islands.<sup>40</sup> In *Schaeffer v. County of Santa Clara*,<sup>41</sup> an area surrounded along 68 percent of its perimeter by the annexing city was assumed to be substantially surrounded.<sup>42</sup>

It is not our province to read any mathematically precise percentage requirement into the term “substantially surrounded” where the Legislature has chosen to let the term stand on its own.<sup>43</sup> Rather, we give the word “substantially” its ordinary meaning, which

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<sup>37</sup> 63 Ops.Cal.Atty.Gen. at 345 (“The proposed territory can still be an ‘island’ although only ‘substantially’ surrounded by the annexing city and, for example, a county boundary, where another city is adjacent to the territory.”)

<sup>38</sup> See *Ste. Marie v. Riverside Co. Regional Park & Open Space Dist.*, 46 Cal. 4th 282, 289 (2009) (construction should “accord meaning to every word and phrase in a statute”). Also, we note that section 56375.3(b)(3), in addition to allowing island annexation if a territory is “[s]urrounded, or substantially surrounded, by the city to which annexation is proposed or by the city and a county boundary or the Pacific Ocean,” also permits island annexation for a territory that is “[s]urrounded by the city to which annexation is proposed and adjacent cities.” This second circumstance *does not* contain the phrase “or substantially surrounded.” From this, we surmise that the Legislature intended that the latter type of island must be *completely* surrounded, while the former may either be completely surrounded or substantially surrounded.

<sup>39</sup> *Fig Garden Park*, 162 Cal. App. 3d at 341.

<sup>40</sup> *Scuri*, 134 Cal. App. 3d at 408-409.

<sup>41</sup> 155 Cal. App. 3d 901.

<sup>42</sup> The *Schaeffer* court concluded that the annexation of this territory, which it assumed to be substantially surrounded, was improper for other reasons.

<sup>43</sup> We note, however, that in 2004 the Legislature considered inserting a requirement into the island annexation provisions that would have specified that “[n]ot less than 51 percent of the exterior boundary of the territory to be annexed is surrounded by the city to

in this case is “in a substantial manner: so as to be substantial,”<sup>44</sup> with “substantial” best defined in this context as “being that specified to a large degree or in the main.”<sup>45</sup> Thus, a LAFCO’s decision that a given territory is “substantially surrounded” would be evaluated as to whether there is “substantial evidence in light of the whole record”<sup>46</sup> to support a finding that the territory is surrounded, to a large degree or in the main, in the manner prescribed by section 56375.3(b)(3). In any event, we believe that our interpretation of the statutory terminology is understandable and intuitive enough to foreclose the argument, advanced by some, that an “island” may not be contiguous to any other unincorporated territory (which is another way of saying that an island of unincorporated territory must be completely surrounded).<sup>47</sup>

And finally, before leaving this topic altogether, we note that there is an additional limitation on whether a particular territory may be deemed an “island” subject to annexation under section 56375.3. That is, the territory may not be a part of a larger island that is itself surrounded, or substantially surrounded, in the manner described in section 56375.3(b)(3). The *Schaeffer* decision illustrates this principle. The territory at issue in *Schaeffer* was a small (19.73-acre) portion of a 600-acre tract of irregularly-

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which the annexation is proposed, by that city and a county boundary or the Pacific Ocean, or that city and another city.” Sen. 1266, 2003-2004 Reg. Sess. (as introduced Feb. 13, 2004; as amend. Apr. 14, 2004). Ultimately, the Legislature settled on the term “substantially surrounded” without further specificity.

<sup>44</sup> *Webster’s New International Unabridged Dictionary* 2280.

<sup>45</sup> *Id.*

<sup>46</sup> *See* § 56107(c).

<sup>47</sup> Because this interpretation flows directly from the language of the statute, it is not necessary to resort to legislative history to ascertain the Legislature’s intent. Nevertheless, we have examined the history, and we believe that it reinforces our conclusion. Before section 56375.3 was amended in 2004, subdivision (b)(1) of the statute permitted a LAFCO to waive protest hearings if the territory to be annexed “does not exceed 75 acres in area, that area constitutes the entire island, *and that island does not constitute a part of an unincorporated area that is more than 100 acres in area.*” The italicized phrase was added to the statute in 1985 (1985 Stat. ch. 541 § 3) but removed in 2004 (2004 Stat. ch. 96 § 1). It was therefore not at issue in the *Fig Garden Park* case, nor is it at issue here. Nonetheless, the very fact that this phrase has come and gone from the statute confirms our understanding that the current legislation is intended to allow LAFCOs the latitude to approve annexations of substantially surrounded islands even when the final boundary configurations result in some connection between the island and another swath of unincorporated territory. Again, the *Fig Garden Park* diagram provides a helpful illustration of such circumstances.

shaped unincorporated territory. The larger tract was completely surrounded by the annexing city, and thus constituted an island within the city limits.<sup>48</sup> While the court accepted the premise that the smaller portion could be considered “substantially surrounded” based on the fact that it was 68 percent surrounded by the city, the court was not persuaded by the argument that the smaller territory should be treated as “an island within the larger 600-acre island.”<sup>49</sup> Focusing on the statute’s “entire island” requirement, the court held that such an annexation

would defeat the statutory purpose that only “entire islands” within a city’s confines be annexed. And it would visit violence upon another of the statute’s dictates, i.e., that the total area to be annexed “*not exceed 100 acres.*” For if *part* of an otherwise forbidden larger island might be so annexed, that proceeding could be followed by other such proceedings, and yet others, until an entire 600 acres . . . be so consumed, contrary to the clear legislative purpose that areas more than 100 acres in size *not* be annexed under section 35150.<sup>50</sup>

In essence, then, the *Schaeffer* court harmonized the statute’s “entire island” provision with its “surrounded or substantially surrounded” provision to determine whether the territory under consideration qualified as an island. The *Fig Garden Park* decision took the same approach,<sup>51</sup> as do we in reaching our conclusions here.

We therefore conclude in response to the first question that, for purposes of section 56375.3, an “island” is an area of unincorporated territory that is (1) completely surrounded, or substantially surrounded—that is, to a large degree or in the main surrounded—by the city to which annexation is proposed or by the city and a county boundary or the Pacific Ocean, or (2) completely surrounded by the city to which annexation is proposed and adjacent cities. An island may not be a part of another island that is surrounded or substantially surrounded in this same manner.

## 2. The “entire” island

While we have already touched on the subject in connection with the definition of an “island,” we now directly address the question whether section 56375.3 requires the annexation of an “entire island” or “entire unincorporated island” as set forth,

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<sup>48</sup> *Shaeffer*, 155 Cal. App. 3d at 905.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* Again, the current maximum area is set at 150 acres. §56375.3(b)(1).

<sup>51</sup> 162 Cal. App. 3d at 342-343.

respectively, in subdivisions (b)(1) and (b)(2) of that statute. A straightforward reading of these provisions compels an affirmative response. Simply put, once the boundaries of an island are fixed, the question under section 56375.3(b)(1) becomes whether the island's territory is 150 acres or less. If so, the territory is subject to annexation under the streamlined procedures of section 56375.3; if not, it is not subject to these procedures.

A LAFCO lacks discretion or authority to use streamlined procedures to annex an island that exceeds 150 acres in area or that does not constitute the entirety of the island in question. Again, because the words used in a statute are to be given their usual, ordinary meaning in the absence of any legislative intent to the contrary,<sup>52</sup> we consult the dictionary for the meaning of the word "entire." We believe that it is most reasonably defined in this context as "with no element or part excepted," "whole," "complete," or "total."<sup>53</sup> Annexing *part* of a given island would run afoul of the command of section 56375.3(b)(1) and (b)(2).<sup>54</sup> Our conclusion is consistent with case law and with our own 1980 opinion on island annexations.<sup>55</sup>

So, in response to the second question, we conclude that Government Code section 56375.3 requires the annexation of an "entire island" or "entire unincorporated island" as set forth, respectively, in subdivisions (b)(1) and (b)(2) of that statute.

### **3. Dividing an island not allowed**

In light of our previous conclusions, we may easily dispose of the third question presented, that is, whether a LAFCO may split up an unincorporated island that exceeds 150 acres into smaller segments of 150 acres or less in order to use the section 56375.3 annexation procedures, and thereby avoid the landowner/voter protest proceedings that would otherwise be required. We conclude that it may not. To split an unincorporated island into smaller pieces for annexation is an action that simply may not be reconciled with the statutory requirement that, to utilize the protest-waiving procedures for island annexation under section 56375.3, a LAFCO must order the annexation of the *entire* island.

A LAFCO has no discretion to disregard this statutory mandate. The requirement is specifically designed to prevent piecemeal annexation as a means of circumventing the

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<sup>52</sup> *Smith v. Selma Community Hosp.*, 188 Cal. App. 4th at 30.

<sup>53</sup> *Webster's New International Unabridged Dictionary* 758.

<sup>54</sup> See § 56375.3(b)(1) ("entire island"), (b)(2) ("entire unincorporated island").

<sup>55</sup> See *Fig Garden Park*, 162 Cal. App. 3d at 343-346; *Schaeffer*, 155 Cal. App. 3d at 903-905; *Scuri*, 134 Cal. App. 3d at 407-409; 63 Ops.Cal.Atty.Gen. at 345.

citizen participation in the annexation process. Several appellate court decisions and our own 1980 opinion are in accord.<sup>56</sup> In addition, the prohibition against subdividing territory for island annexation purposes is further reinforced by section 56375.4(a). That section generally prohibits the use of section 56375.3 to annex territory that “became surrounded or substantially surrounded by the city to which annexation is proposed” after January 1, 2000, meaning that a city cannot now annex part of a territory and thereby create a remaining territory (of 150 acres or less) that would later be subject to a subsequent annexation under the streamlined procedure.

Therefore, we conclude in response to the third question that a LAFCO may not split up an unincorporated island that exceeds 150 acres into smaller parcels in order to utilize the streamlined “island annexation” procedures set forth in Government Code section 56375.3 and thereby avoid the landowner/voter protest proceedings that would otherwise be required.

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<sup>56</sup> See *Fig Garden Park*, 162 Cal. App. 3d at 343-346; *Schaeffer*, 155 Cal. App. 3d at 903-905; *Scuri*, 134 Cal. App. 3d at 407-409; 63 Ops.Cal.Atty.Gen. at 345.



# ***Policies and Procedures***

## ***Tulare County Local Agency Formation Commission***

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**Policy Number:** C-9

**Effective Date:** *Adopted February 2, 2005*

**Authority:** *Government Code §56000 et seq., LAFCO Resolutions: 05-006, 05-062*

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**Title:** ***AB 1555 Island Annexation Policy***

**Procedure:**

### **9.1. General Considerations**

Assembly Bill (AB) 1555 (Longville) took effect on January 1, 2000. It contains amendments to GC §§56113, 56375, 57080 and 57087.3 located within the Cortese-Knox Government Reorganization Act of 1985 (“Cortese-Knox Act”). In 2000, the Act was comprehensively revised to incorporate these and other changes, and re-titled the Cortese-Knox-Hertzberg Act. Further amendments were made to the law in 2003, and in July 2004, SB 1266 (Torlakson) was signed into law. These amendments are addressed herein.

According to the Legislative Counsel’s Digest of AB 1555, this bill would authorize LAFCo’s to approve without an election the annexation or reorganization of an unincorporated island or unincorporated islands within city limits under specified conditions depending on whether the proceeding is initiated on or after January 1, 2000 and before January 1, 2007. However, after reviewing AB 1555, there are several ambiguous provisions which can cause uncertainty in the application of these new requirements to annexations of county islands.

When applying the Cortese-Knox Act in general, GC §56300 provides that it is the intent of the Legislature that each commission establish policies and exercise its powers in a manner that encourages and provides planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space lands within those patterns. Similarly, GC §56375, subdivision (i), empowers a commission to adopt written procedures for the evaluation of proposals.

Against this background, this policy initially addresses the Basic Requirements of AB 1555 and then provides an interpretation of how AB 1555 will be applied as matter of policy by the Tulare County Local Agency Formation Commission unless other required by law.

## 9.2. **Basic Requirements of AB 1555**

Pursuant to GC §56375, subdivision (a), the commission shall not have the power to disapprove a city annexation (initiated by resolution of the city) of contiguous territory if the commission finds that any of the following requirements are met:

- A. The contiguous territory is surrounded or substantially surrounded by the city to which the annexation is proposed, or by that city and a county boundary, or by the Pacific Ocean, if the contiguous territory:
  - I. is substantially developed or developing,
  - II. is not prime agricultural land as defined in GC §56064,
  - III. is designated for urban growth by the general plan of the annexing city, and
  - IV. is not within the sphere of influence of another city; or
- B. The contiguous territory is located with an urban service area which has been delineated by the commission and which is not designated prime agricultural land as defined in GC §56064, and is designated for urban growth by the general plan of the annexing city; or
- C. The contiguous territory is an annexation or reorganization of unincorporated islands meeting the following requirements:
  - I. The annexation is initiated by resolution of the affected city on or after January 1, 2000, and before January 1, 2007.
  - II. The commission shall approve an annexation after notice and hearing, and waive protest proceedings if the commission finds that the territory contained in the annexation proposal meets all of the following requirements:
    - (a) The contiguous territory does not exceed 150 acres in area and that area constitutes the entire island.
    - (b) The contiguous territory constitutes an entire unincorporated island located within the limits of a city, or constitutes a reorganization containing a number of individual unincorporated islands.
  - III. The contiguous territory is surrounded in either of the following ways:
    - (a) Surrounded, or substantially surrounded, by the city to which the annexation is proposed, or by the city and a county boundary, or
    - (b) Surrounded by the city to which the annexation is proposed and adjacent cities.

- (c) GC §56375.3 shall not be construed to apply to any unincorporated island within a city that is a gated community where services are currently provided by a community services district
  - (d) Notwithstanding any other provision of law, at the option of either the city or the county, a separate property tax transfer agreement may be agreed to between a city and a county pursuant to Revenue and Taxation Code Section 99 without affecting any existing master tax sharing agreement between the city and the county.
- IV. The contiguous territory is substantially developed or developing. This finding shall be based on one or more factors, including, but not limited to, any of the following factors:
    - (a) The availability of public utility services,
    - (b) The presence of public improvements, or
    - (c) The presence of physical improvements upon the parcel or parcels within the area.
  - V. The territory is not prime agricultural land as defined by GC §56064.
  - VI. The contiguous territory will benefit from the annexation or is receiving benefits from the annexing city.
  - VII. Notwithstanding any other provision of subdivision (d) of GC §56375.3 subdivision (d) shall not apply to all or any part of that portion of a redevelopment project area referenced in Health and Safety Code §33494.41, which as of January 1, 2000, meets all of the following requirements:
    - (a) is unincorporated territory,
    - (b) contains at least 100 acres,
    - (c) is surrounded or substantially by unincorporated territory, and
    - (d) contains at least 100 acres zoned for commercial or industrial uses, or is designated on the applicable county general plan for commercial or industrial uses.

**9.3. Interpretation of AB 1555**

- A. Unless otherwise required by law, the following policies shall apply to the provisions of AB 1555:
  - I. There are two ways to define the term ‘substantially surrounded’:

- (a) First is the percentage method. In this context, the terms “substantially surrounded” shall mean that the contiguous territory subject to an AB 1555 annexation must be surrounded by at least sixty five percent (65%) by that city and a county boundary.
- (b) Second, an island of unincorporated territory may also be determined to be “substantially surrounded” if that island is surrounded by city limits comprising less than sixty-five percent (65%) AND if the remaining side is comprised of a natural or man-made barrier, including such features as: a river, an irrigation canal, a railway or a divided highway.

~~II.— Subject to meeting the other requirements of AB 1555, the commission may allow a city to split an area that is more than 150 acres for the purpose of annexing contiguous territory authorized by AB 1555. In other words, a county island of more than 150 acres may be divided into two or more substantially surrounded sub-islands which may be annexed separately.~~

**9.4. City-County Tax Sharing Agreement for Island Annexations**

The City and County may negotiate a special tax sharing agreement to replace the existing Master Tax Agreement to mitigate any adverse service effects from an island annexation proposal. The tax sharing agreement should address the island annexation(s) consistent with Revenue and Taxation Code Section 99.

- A. If a separate tax sharing agreement has been proposed but hasn’t been ratified by the City and County before the island annexation proposal is heard by the Commission then the following applies:
  - I. The approval of the annexation may be conditioned to require the ratification of a tax sharing agreement by the City and County before the Certificate of Completion is recorded, and
  - II. If a separate tax sharing agreement can not be reached then the following applies:
    - a) The City or County shall notify LAFCo that the agreement can not be reached, and
    - b) The Master Tax Agreement shall apply to the annexation, or
    - c) If the City or County does not accept the Master Tax Agreement, the approval of the annexation shall be voided.

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# 2013 Events Calendar

## JANUARY

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- 16 Regional Council of Rural Counties Annual Dinner (Sacramento)
- 16-18 California Association of Sanitation Agencies Conference (Indian Wells)
- 25 **CALAFCO Legislative Committee** (Ontario)

## FEBRUARY

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- 7 **CALAFCO Board of Directors Strategic Retreat** (Irvine)
- 8 **CALAFCO Board of Directors Meeting** (Irvine)

## MARCH

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- 5 Association of CA Water Agencies Legislative Symposium (Sacramento)
- 15-17 Local Government Commission Ahwahnee Conference (Yosemite)
- 22 **CALAFCO Legislative Committee** (Sacramento or Bay Area)
- TBD **CALAFCO U Course**

## APRIL

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- 4-6 Fire District Association Annual Meeting (Napa)
- 10-12 **CALAFCO Staff Workshop** (Davis)
- 24-26 California Assn. of Sanitation Agencies Conference (Newport Beach)
- 24 League of Cities Legislative Day (Sacramento)

## MAY

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- 3 **CALAFCO Board of Directors Meeting** (Northern Region)
- 7-10 Association of California Water Agencies Conference (Sacramento)
- 10 **CALAFCO Legislative Committee** (San Diego)

- 14-15 California Special Districts Assn. Legislative Days (Sacramento)
- 29-30 California State Assn. of Counties Legislative Conference (Sacramento)

## JUNE

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- TBD **CALAFCO U Course**

## JULY

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- 12 **CALAFCO Board of Directors Meeting** (Coastal Region)
- 26 **CALAFCO Legislative Committee** (Conference call)

## AUGUST

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- 21-24 California Association of Sanitation Agencies Conference (San Diego)
- 28 – 30 **CALAFCO Annual Conference** (North Lake Tahoe)
- 30 **CALAFCO Board of Directors Meeting** (North Lake Tahoe)

## SEPTEMBER

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- 18-20 League of California Cities Annual Conference (Sacramento)
- 25-27 Regional Council of Rural Counties Annual Conference (El Dorado County)
- 16-19 California Special Districts Assn. Annual Conference (Monterey)

## OCTOBER

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## NOVEMBER

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- 8 **CALAFCO Board of Directors Meeting** (Sacramento)
- 19-22 California State Assn. of Counties Annual Meeting (San Jose)

## DECEMBER

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- 3-6 Association of California Water Agencies Conference (Los Angeles)