



Kern County
GRAND JURY

2014 – 2015

Dennis Mike Elliott
Foreperson

Elita Abrams

Wesley Brown

Gary Chaffin

Andrea Derrick

Sandra Essary

Catherine Garcia

Ray Griggsom

Barbara Hightower

Judith House

Warren Jones

Mallon Keel

Michael McNatt

Patricia Mosher

Guy Porter

Barbara Rycerski

Donna Schaffel

Vaughn Shaw

Teresa Vasquez

November 17, 2014

Rebecca Moore, Executive Director
Local Agency Formation Commission
County of Kern
5300 Lennox Ave., Suite 303
Bakersfield, CA 93309

Attn: Rebecca Moore

Attached is a copy of the enclosed 2014-2015 Grand Jury Final Report concerning the **Local Agency Formation Commission** in accordance with the provisions of Penal Code Section 933.05(f) which states as follows:

“A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No office, agency, department, or governing body of a public agency, shall disclose any contents of the report prior to the public release of the final report.”

Please note that this report is confidential until public release. The Grand Jury will be releasing this report to the public on **November 25, 2014**. Accordingly, you are instructed not to disclose the contents of the report until that time has run.

Thank you for your consideration and cooperation.

Respectfully,

Dennis Mike Elliott, Foreperson
2014-2015 Kern County Grand Jury

LOCAL AGENCY FORMATION COMMISSION

PREFACE:

The County Services and Special Districts Committee (Committee) of the 2014-2015 Kern County Grand Jury visited the office of the Local Agency Formation Commission (LAFCO) on August 4, 2014.

PURPOSE OF INQUIRY:

California Penal Code §933.5 authorizes the Grand Jury to investigate and report on various departments throughout Kern County. The Committee visited LAFCO to garner information on their role in Kern County pertaining to County Services and Special Districts.

PROCESS:

The members of the Committee met with the Executive Officer and asked questions pertaining to LAFCO. Information was also gathered from various websites covering the subject of LAFCO, County Services and Special Districts.

BACKGROUND:

Local Agency Formation Commissions were established in each county by the California Legislature in April 1963 (except San Francisco which would obtain one in 2001). LAFCOs' current legal authority and mandate are defined by the Cortese-Knox-Hertzberg Local Government Act of 2000 (Government Code §56000 *et seq.*).

FACTS:

LAFCOs have both regulatory and planning authority:

- A. As regulatory agencies, LAFCOs are charged with "discouraging urban sprawl and encouraging the orderly formation and development of local agencies" based on "local circumstances and conditions." LAFCOs' regulatory responsibilities include reviewing, approving or denying proposals to annex land to cities or special districts.
- B. As planning agencies, LAFCOs are charged with reviewing and updating as necessary the "Sphere of Influence" (SOI) of each city and special district once every five years. In updating SOIs, LAFCOs must prepare Municipal Service Reviews (MSR) of relevant local agencies and services.

- LAFCOs may initiate proposals to consolidate special districts, merge a special district with a city, dissolve a special district, establish a subsidiary district, or any combination of these changes
 - Government Code §56000 makes it difficult for communities to break away from their original cities by forcing the community to gain approval from the city it is detaching from by a 2/3 vote from the entire community and affected city
 - According to the Committee on Local Government of the California Senate, LAFCOs regulate all city and most district boundaries, such as water districts, airport districts and county service districts
- C. The Executive Officer has held the current position for five years.
- Employed at LAFCO for 20 years, beginning as a part time Receptionist and working her way up to Executive Officer
 - Oversees the budget, SOI Surveys, MSR proposals for reorganizations
 - Supervises LAFCO staff
- D. The Board is governed by State Law which consists of:
- Two County Supervisors
 - Two City representatives in an alphabetical rotation by a City Selection Committee - Kern Council of Governments
 - Two district representatives
 - One public representative chosen by LAFCO
 - One restricted public representative
 - One representative of the largest city (Bakersfield)
 - Each have four year terms (with terms staggered in 2 year increments)
- E. The local LAFCO office employs one Executive Officer, one full time Administrative Assistant, one part time Receptionist and one part time Geographical Information Systems mapper.
- F. LAFCO receives funding from the County, Cities and Special Districts – one third from each.
- G. The Budget is \$496,800 for 2014-2015 and is established by LAFCO, the County Administrative Office and the Board of Supervisors.
- H. Some Special Districts are independent entities, with their own boards and budgets. Board members are elected by voters of that district per Proposition 218.
- Dependent entities fall under the purview of the Board of Supervisors.
 - Directors are appointed by the Board of Supervisors and/or other elected entities.

- I. County Service Areas are managed by the Board of Supervisors, not by a district board. A fee may be assessed for services provided.
- J. The Kern County Auditor Controller's Office processes all expenses for LAFCO, including payroll. There is a fee paid to the County for these services and the charge is determined on a warrant by warrant basis.
- K. The last MSR was completed in 2009. The SOI Surveys are sent out every five years to the cities and special districts to address whether there are possible cost reductions and shared facilities. Most responses note that districts are either already sharing facilities or cannot do so.

FINDINGS:

- F1. The website for LAFCO inaccurately lists the current Executive Officer as "Interim" although the position has been filled for five years.
- F2. While LAFCO has no authority to force issues, the public may reject proposals recommended by LAFCO.
- F3. When creating a Special District, the district must show a preference as to their status whether it be independent or dependent. An application is completed citing the status for which they are applying.
 - Only one special district in 20 years has changed their status after applying
 - Upon creation, Supervisors maintain oversight for six months before the district can go independent with their own board

COMMENTS:

The County Services and Special Districts Committee thanks the Executive Officer for the time spent during our visit, answering our many questions regarding LAFCO, its function and the information forwarded to the Committee.

RECOMMENDATIONS:

- R1. The LAFCO website needs to be updated. (Finding 1)

NOTES:

The Local Agency Formation Commission should post a copy of this report where it will be available for public review.

Persons wishing to receive an email notification of newly released reports may sign up at: www.co.kern.ca.us/grandjury, click on: Sign up for early releases.

Present and past Kern County Grand Jury Final Reports and Responses can be accessed through the Kern County Library system and the Kern County Grand Jury website: www.co.kern.ca.us/grandjury.

RESPONSE REQUIRED WITHIN 90 DAYS TO:

**PRESIDING JUDGE
KERN COUNTY SUPERIOR COURT
1415 TRUXTUN AVENUE, 2ND FLOOR
BAKERSFIELD, CA 93301**

**cc: FOREPERSON
KERN COUNTY GRAND JURY
1415 TRUXTUN AVENUE, SUITE 600
BAKERSFIELD, CA 93301**

§ 933. Findings and Recommendations (Excerpt)

No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices.....

As used in this section "agency" includes a department.

§ 933.05. Responses to Grand Jury Reports (Excerpt)

- (a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:
- (1) The respondent agrees with the finding.
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:
- (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.
- (f) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.

(emphasis added)

Kern County Local Agency Formation Commission

December 9, 2014

Presiding Judge
Kern County Superior Court
1415 Truxtun Ave, 2nd Floor
Bakersfield CA 93301

Thank you for the opportunity to meet with your Special District Division of the Grand Jury. It's always a pleasure to discuss LAFCo with those interested. Thank you, as well, for the opportunity to respond to your Report, Findings and Recommendation concerning LAFCo

In response to your Findings:

F1 I agree that the website for LAFCo inaccurately lists the current Executive Officer as "Interim" although the position has been filled for five years. This has been corrected.

F2 Although for the most part, I agree that LAFCo has no authority to force issues, and that the public may reject proposal recommended by LAFCo. There is a process for rejecting proposals, which involves a protest hearing in which registered voters and landowners, in the affected area, may protest. (Government Code Section 57075). If the thresholds are not met in the protest hearing or election, LAFCo's decision must be confirmed.

F3 This finding that Special Districts must show a preference as to their status when applying is correct. **Correction: The information I provided to the Grand Jury regarding a district changing from independent to dependent was incorrect. No formal action has been taken to create a subsidiary district in the last 20 years.** I apologize for the incorrect information. The last part of this finding states that "Upon creation, Supervisors maintain oversight for six months before the district can go independent with their own board" may be correct for some types of districts but not others. The formation process for a special district not only requires a LAFCo process but is also governed by a Principal Act. Each type of special district has its own Principal Act and must be formed according to that Act.

In response to your Recommendation:

R1 "The LAFCO website needs to be updated (Finding 1)

The website for LAFCo has been updated. In fact, since we met, LAFCo has taken responsibility for maintaining our own website which is still part of the County of Kern website.

Thank you again for taking the time to meet with me and for your interest in LAFCo. It's been a pleasure working with each of you.

Sincerely,



Rebecca Moore
LAFCo Executive Officer

cc: Foreperson
Kern County Grand Jury
1415 Truxtun Avenue Suite 600
Bakersfield CA 93301