

Who is Watching Our Special Districts?

Summary

The County of Santa Cruz has 92 special districts within its borders. There are special districts for water, fire, parks and recreation, cemeteries and many others. Each special district is created subject to a “principal act”, a set of individualized statutes pertinent to the purpose of the district. One of the tasks of the Grand Jury is to act as a “watchdog” over the special districts within the County in an attempt to ensure they are functional and operating within parameters that are in the best interest of the citizens they serve. Of the special districts in Santa Cruz County, 14 operate outside the purview of the Local Agency Formation Commission (LAFCO) and this report will not address those districts. Acting upon a complaint, the Grand Jury initiated an investigation into the operations of one of the districts, and determined that there is limited oversight of how this particular district functioned. Although statutes had been in place for years, the specific district was operating without written “rules for its proceedings” (otherwise known as bylaws) which is a violation of its principal act under Public Resources Code 5784.13(e). This special district had also only recently adopted parliamentary procedures for the conduct of its meetings.

Without bylaws and established parliamentary procedures, the governing board of a special district is virtually answerable to no one except the electorate, which in many cases is apathetic towards the operation of the district until an issue of critical neighborhood concern arises. Between election cycles, this leaves members of the public, as well as members of the district’s board, with no method of redress if there are concerns with the activities of the governing board.

This investigation opened the door to broader issues: One, how to ensure local special districts comply with state law; and two, the feasibility of compiling special district governing documents in a central repository for easy public access.

Initially, special districts were independent governmental agencies subject only to state and local laws until the California legislature created Local Agency Formation Commissions (LAFCO) in 1963. Among LAFCO responsibilities is to oversee the formation and/or modification of special districts within their counties. Another part of the LAFCO mandate is to perform Municipal Service and Sphere-of-Influence reviews of special districts every five years. Currently in this county, except for these reviews, once LAFCO approves creation of a new district, the interaction with that entity ceases. Additionally, little information about a special district is retained by LAFCO other than the original application.

LAFCO could confirm transparency to the public by making available for examination the following special district documents:

- Bylaws;
- Rules of parliamentary procedure, i.e., Robert’s Rules of Order or Rosenberg’s Rules of Order; and

- A mission/vision statement, if applicable, although not required by law, it gives their constituents a basic understanding of the district’s purpose.

The Grand Jury deems it appropriate that Santa Cruz County LAFCO expand its application and review process to include submission and retention of special district governing documents (mission statement, bylaws and parliamentary procedures) in a central repository as provided under LAFCO’s Municipal Service Review Guidelines: #7, Government Structure Options, #8, Evaluation of Management Efficiencies and #9, Local Accountability and Governance.

Definitions

Special District: An agency sanctioned under California law for the performance of a local government function within specific boundaries. Districts range in size from small to very large and often cross political boundary lines, such as city and county borders, to serve a common community interest.

Principal Act: A set of state statutes that allow for the creation of specific special districts.

Governing Board: Local elected officials of a special district.

Local Agency Formation Commission (LAFCO): Government agency authorized by state law with a variety of responsibilities, among which is regulation of the creation and boundaries of cities and special districts within its county, and any modifications thereof.

LAFCO Commissioners: Two county supervisors, two city council members, two from special districts boards and one member of the public at large.

Municipal Service Review: State law requires that LAFCO prepare service reviews of all governmental services once every five years for the purpose of identifying opportunities to improve the quality, efficiency or cost-effectiveness of local services.

Sphere-of-Influence: “A plan for the probable physical boundaries and service area of a local government agency (Government Code Section 56076).” A sphere of influence will reflect the limits of probable future growth of an agency during the applicable general plan period or twenty years. Spheres of influence are adopted by LAFCO following a public hearing and are required to be reviewed every five years.

Background

Of the 92 special districts within Santa Cruz County, many have been in existence 50 or more years. Special Districts have limited oversight and reporting requirements which include the four-year election cycle, the every-five-year Municipal Service and Sphere-of-Influence reviews performed by LAFCO and an annual financial statement submitted to the California State Controller’s Office. Both large and small districts (i.e., water vs. cemetery districts) have an obligation to be accessible and transparent to the public they serve. For the most part, larger districts appear to be professionally run, complying with the applicable statutes and the concerns of their constituents in fulfilling their intended purpose.

However, smaller districts operating with far less or no staff and often volunteer members of their governing boards, may fall into gray areas of minimal compliance with guidelines and statutes in the operation of their districts. It is in this area that the Grand Jury became

aware of problems that could affect all special districts in providing consistent, quality performance.

The Grand Jury investigated a complaint regarding the operation of a particular special district within Santa Cruz County and discovered many of the allegations made about the governing board of the district to be valid. It was found that the district in question (formed in the 1950s) had no written bylaws and to have only recently adopted parliamentary procedures to guide their meetings and operations. The combination of lack of formal procedures, bylaws and a mission statement led to ongoing problems and resulted in a breeding ground for hostility among the public and some members of its board.

Scope

The Grand Jury examined the statutory requirements and safeguards that ensure transparency to the public. In addition, the Jury looked at the benefits of expanding Santa Cruz County LAFCO's application and review process to include submission and retention of special district governing documents.

Findings

1. Each county LAFCO operates independently and may adopt local policies. [LAFCO 101]

Response: LAFCO – AGREES

2. LAFCO, through Municipal Service and Sphere-of-Influence reviews, may hold special districts accountable for meeting community service needs, including governmental structure and operational efficiencies. [Government Code 56439(a)(5)]

Response: LAFCO – PARTIALLY AGREES

There is no Government Code Section 56439(a)(5). Government Code Section 56430 requires LAFCO, when preparing the five-year service reviews, to make determinations regarding the services being provided to the various communities in the county. One determination subject is:

"(5) Accountability for community service needs, including governmental structure and operational efficiencies."

3. From the inception of special districts, they were required to operate by "rules," often redefined as bylaws or rules of proceedings as in (Kehoe) Government Code 61045(f).

Response: LAFCO – PARTIALLY DISAGREES

Government Code Section 61045(f) is located in the Community Service District law and states: "(f) The board of directors shall adopt rules or bylaws for Its

proceedings." This section of the law applies only to Community Service Districts formed under Government Code Section 61000 et seq. There are no such districts in Santa Cruz County. As pointed out in the comments LAFCO has received from some of the districts in Santa Cruz County, the enabling acts for other types of districts (such as fire protection districts and county water districts) do not contain a similar requirement.

4. All special districts fall under the mandate of the Ralph M. Brown Act, adopted in 1953 [Government Code 54950 to 54962], which requires agencies to have open meetings.

Response: LAFCO – AGREES

5. In Santa Cruz County the special district that initiated this investigation has operated, and others may continue to operate, in violation of statutes requiring adoption of bylaws and parliamentary procedures.

No Response Required

6. Santa Cruz County special districts have never been required to submit bylaws, parliamentary procedures and mission statements to LAFCO.

Response: LAFCO – AGREES

Response: County of Santa Cruz Board of Supervisors – AGREES

7. LAFCO special district files in Santa Cruz County contain very few, if any, copies of bylaws, parliamentary procedures or mission statements.

Response: LAFCO – AGREES

LAFCO also notes that, in reviewing the Grand Jury's report, several special districts have provided LAFCO with website references and paper copies of their bylaws, parliamentary procedures, and mission statements.

Response: County of Santa Cruz Board of Supervisors – DEFERS TO LAFCO

The County does not have access to LAFCO files and will defer to LAFCO to respond to this finding.

8. In Santa Cruz County no governmental agency has provided special district oversight to ensure existence of and operation within bylaws and parliamentary procedures.

Response: LAFCO – AGREES

Response: County of Santa Cruz Board of Supervisors – AGREES

Special districts operate under their own locally elected, independent board of directors and are not under the jurisdiction of any other governmental agency.

9. Among the 78 special districts within Santa Cruz county that are the subject of this report, all are authorized to operate under various principal acts and California statutes.

No Response Required

Conclusions

1. The Santa Cruz County LAFCO has not ensured compliance with the law requiring adoption of bylaws and parliamentary procedures within a special district.
2. The Santa Cruz County LAFCO has no mechanism to verify that parliamentary procedures and bylaws are followed in the operation of special district boards.
3. There is no central repository of legally-required special district documents to guarantee public access, review and utilization.
4. The Grand Jury believes that minimal oversight and the lack of public access to special district governing documents could create problems within any district.

Recommendations

1. Santa Cruz LAFCO commissioners should require that a mission statement accompany the initial application for formation of a special district.

Response: LAFCO – WILL NOT BE IMPLEMENTED

Consistent with applicable law, LAFCO currently has extensive application requirements for any party proposing the formation of a new district. These requirements include a purpose, a budget, and an operating plan. A LAFCO application requirement that a mission statement be included in the application would be duplicative. A district, if it is formed, may decide whether the adoption of a mission statement would be a helpful management tool.

Response: County of Santa Cruz Board of Supervisors – DEFERS TO LAFCO

LAFCO was created to regulate the boundaries of cities and special districts. The County defers to the LAFCO Board to determine whether this recommendation falls within its purview.

2. Santa Cruz LAFCO commissioners should require bylaws and parliamentary procedures be adopted, presented to and permanently lodged with LAFCO within 90 days of formation of a new district.

Response: LAFCO – HAS NOT BEEN IMPLEMENTED

This recommendation has not been implemented and it may exceed LAFCO's legal authority under state law. LAFCO notes that any new district will be subject to any of the other Grand Jury recommendations that LAFCO implements for all districts.

Response: County of Santa Cruz Board of Supervisors – DEFERS TO LAFCO

LAFCO was created to regulate the boundaries of cities and special districts. The County defers to the LAFCO Board to determine whether this recommendation falls within its purview.

3. Santa Cruz LAFCO commissioners should require all existing special districts to have bylaws and parliamentary procedures and to submit copies for LAFCO's files within six months.

Response: LAFCO – WILL NOT BE IMPLEMENTED

This recommendation will not be implemented and it may exceed LAFCO's authority under state law and may conflict with the enabling statutes for various special districts. If legal support existed for such a requirement, LAFCO would not choose to implement it because LAFCO believes that the decision to adopt bylaws and parliamentary procedures should be made by each district board, and that LAFCO should not prioritize its limited staff time in an effort to enforce special districts to adopt bylaws and parliamentary procedures.

Response: County of Santa Cruz Board of Supervisors – DEFERS TO LAFCO

LAFCO was created to regulate the boundaries of cities and special districts. The County defers to the LAFCO Board to determine whether this recommendation falls within its purview.

4. The Santa Cruz LAFCO office should act as a central repository and maintain copies of each special district's bylaws, parliamentary procedures and, if applicable, mission statement.

Response: LAFCO – HAS BEEN IMPLEMENTED

LAFCO has implemented this recommendation in the following manner:

-- The "Links" page of LAFCO's website has been expanded to include notations for the special districts that don't maintain websites. Only six independent districts do not have any website:

-- Alba Recreation and Park District

--Central Water District

--Opal Cliffs Recreation and Park District

--Pajaro Valley Public Cemetery District

--Reclamation District 2049 (College Lake)

--Salsipuedes Sanitary District.

--Santa Cruz LAFCO has opened a paper file that will be the permanent repository of all district bylaws, parliamentary procedures, and mission statements that districts submit in paper format.

--Santa Cruz LAFCO has added a notation on the "Links" page of its website that the paper versions of special district bylaws, parliamentary procedures, and mission statements that have been submitted to LAFCO may be accessed at the LAFCO office.

--In the next round of service reviews, LAFCO will inquire of each special district if they have bylaws, parliamentary procedures, and mission statements. LAFCO will ask if the documents are available on the district's website, and will invite districts that don't make the documents available on their website to file paper copies at the LAFCO office.

Response: County of Santa Cruz Board of Supervisors – DEFERS TO LAFCO

LAFCO was created to regulate the boundaries of cities and special districts. The County defers to the LAFCO Board to determine whether this recommendation falls within its purview.

5. The public should have access during normal County business hours or by electronic media to LAFCO copies of special district governing documents.

Response: LAFCO – HAS BEEN IMPLEMENTED

Response: County of Santa Cruz Board of Supervisors – DEFERS TO LAFCO

LAFCO was created to regulate the boundaries of cities and special districts. The County defers to the LAFCO Board to determine whether this recommendation falls within its purview.

6. The LAFCO commissioners and/or the County Board of Supervisors should draft enforceable penalties for failure to comply with these recommendations, following adoption.

Response: LAFCO – WILL NOT BE IMPLEMENTED

LAFCO will not implement this recommendation because:

--It may not be legal under state law

--LAFCO has major pending applications to review and significant state mandates to comply with. LAFCO must use its limited resources to provide thorough reviews and public hearings on applications, and to meet the state mandates

--The public and the Grand Jury should deal directly with any district they believe is failing to provide adequate transparency in conducting the public's business.

Response: County of Santa Cruz Board of Supervisors – DEFERS TO LAFCO
 LAFCO was created to regulate the boundaries of cities and special districts. The County defers to the LAFCO Board to determine whether this recommendation falls within its purview.

Responses Required

Respondent	Findings	Recommendations	Respond Within / Respond By
County of Santa Cruz LAFCO Directors	1 – 4, 6 – 8	1 – 6	90 Days October 1, 2009
County of Santa Cruz Board of Supervisors	6 – 8	1 – 6	60 Days September 1, 2009

Sources

Publications / Documents

California Special Districts Association informational publication;

CSDA website: <http://www.csda.net/>

Local Agency Formation Commission (LAFCO) publication “LAFCO 101”;

LAFCO website: <http://www.calafco.org/>

Santa Cruz County LAFCO

S.C.C. LAFCO’s new special district application

LAFCO’s Municipal Service Review Guidelines

Robert’s Rules of Order

Rosenberg’s Rules of Order

Ralph M. Brown Act

Public Resource Code 5780(b)

Public Resources Code 5784.13(e)

SB 135 (Kehoe) 2006 - 61045 California Government Code

Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000

Government Code 56000; 56439(a)(5); 56425(h)

California State Controller’s Report dated 09/04/08

California Senate Local Government Committee publication;

“What’s so special about special districts?” 2002 Mizany & Manatt

Governing board minutes from 2007 and 2008 of special district named in complaint

Interviews

Complainant of 2008/2009 Grand Jury complaint number five

Chairman of special district named in complaint

Past board member of special district named in complaint

Staff member of S.C. Treasurer/Tax Collector’s Office

Executive Officer, Santa Cruz County LAFCO

Member of County Counsel

