



September 9, 2015

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The Honorable Glenda Sanders  
Presiding Judge of the Superior Court  
700 Civic Center Drive West  
Santa Ana, CA 92701

**SUBJECT: Required Response to the 2014-2015 Orange County Jury report, "Orange County Local Agency Formation Commission (OC LAFCO): It's Time to Redraw the Lines"**

Dear Judge Sanders:

In accordance with Penal Code 933.04(a) and (b), the Orange County Local Agency Formation Commission (OC LAFCO) is providing the following response to each of the findings and recommendations of this report that require a response from OC LAFCO. We commend the Grand Jury for its effort to review the power and duties of OC LAFCO involving island annexations and initiation of special district consolidations. Conversely, OC LAFCO appreciates the opportunity to respond to its proactive efforts in these areas and provide clarity on the Commission's progress and legislative authority through the following responses.

### Findings

*F.1 OC LAFCO's has failed to effectively fulfill its legislative mandate to proactively pursue efficiency of local governmental organizations by restructuring them and reshaping their boundaries in a logical, orderly and timely manner.*

**Response:** OC LAFCO disagrees wholly with this finding. Since its inception in 1963, OC LAFCO has approved numerous incorporations, consolidations, dissolutions, mergers, annexations and reorganizations that have reshaped boundaries of cities and special districts and enhanced municipal service delivery to Orange County residents. The Commission has effectively balanced its role as the

Legislature's "watchdog" with being a leader, partner, and advocate of efficient government in Orange County. The Commission has proactively worked with the County of Orange, cities, special districts, and community groups to establish logical boundaries, reorganize illogical boundaries, and encourage governmental structures that reflect Orange County's diversity as well as the needs and desires of its residents through unique efforts.

Further, in 1997, the Commission began conducting annual strategic planning sessions to proactively discuss and prioritize the agency's key projects and activities. Following the session, an annual work plan is adopted by the Commission that represents an alignment of current staffing, budget and other resources required to complete legislatively mandated and proactive efforts initiated and led by OC LAFCO. For nearly 20 years, the Commission has provided leadership on efforts described briefly below that have allowed OC LAFCO to carry out its legislative mandate in a deliberate and collaborative approach to effectively address the municipal service needs of Orange County residents that are delivered by the County, cities and special districts.

#### Municipal Service Reviews (MSRs)

OC LAFCO is required to conduct Municipal Service Reviews (MSRs) for all cities and special districts located within the County to look at future growth and how agencies are planning to deliver public services in the most cost-effective and efficient manner. OC LAFCO's outstanding efforts on MSRs over the years have proven to be valuable on many fronts. MSRs have helped OC LAFCO develop stronger relationships with our member agencies (cities and special districts), highlight agency "best practices" and, when appropriate, plant "seeds for change" that have resulted in Commission-approved changes of organization that have ultimately benefited residents and service providers alike. OC LAFCO has met this legislative mandate in a timely manner by being one of the few LAFCOs to complete three cycles of MSRs in accordance with the legislative deadline.

#### Unincorporated Islands Program

OC LAFCO's Unincorporated Islands Program continues to be a model of success for implementing the streamlined island annexation statutes enacted by the State Legislature 15 years ago. However, the success of the program has been impacted by the State's take-away of funding available to cities upon annexation as well as infrastructure challenges associated with the remaining islands. Even with these challenges, OC LAFCO has continued to identify this as a priority by committing both staff and budget resources to support efforts of island annexations. The Commission's leadership in this area has resulted in over 40 successful annexations with only 33 unincorporated areas remaining, which means over 50% of Orange County's islands have been annexed.

### Shared Services and Fiscal Trends Web Programs

OC LAFCO has been recognized both locally and statewide for its unique approach to encouraging conversations among local government leaders on ways to improve or increase efficiency in service provision and possible cost-savings across jurisdictional and local boundaries. For the past four years, the Commission has effectively and proactively used its legislative authority and distinctive leadership through its Shared Services and Fiscal Trends web based programs to foster discussions that work towards the common goals of efficiency, cost reduction, fiscal savings, and improved service delivery.

The MSR reports and project links to OC LAFCO's Unincorporated Islands, Shared Services, and Fiscal Trends Program can be found on OC LAFCO's website at [www.oclaftco.org](http://www.oclaftco.org).

*F.2 OC LAFCO has failed to use its latent power to initiate, let alone obtain, a single consolidation since the Legislature delegated this authority to it 22 years ago.*

**Response:** OC LAFCO disagrees with this finding, in particular that it has not obtained a single consolidation in 22 years and notes the following points of clarification:

First, LAFCO's authority to initiate a consolidation is not synonymous nor works in tandem with the term "latent power." A latent power, in accordance with Government Code Section 56050.5, means those services, facilities, functions, or powers authorized by the *principal act* under which the *district* is formed, but that are not being exercised, *as determined by the commission* pursuant to subdivision (i) of Section 56425. This term, in its use in the statute that governs LAFCO, is not intended to apply to LAFCO, but rather is applicable to independent special districts and LAFCO's authority over their jurisdictional boundaries. Therefore, OC LAFCO disagrees that it has failed to use its latent power, as this term is not applicable to OC LAFCO's authority to initiate consolidation.

Secondly, while OC LAFCO has not initiated a consolidation through the authority granted to the Commission by Government Code Section 56375, for many years OC LAFCO has been at the forefront and even the face of discussions involving consolidations. The role of the Commission and OC LAFCO staff as a facilitator and, in many cases a mediator, led to voluntary action by special districts that resulted in many successful reorganizations and consolidations of special districts. OC LAFCO's collaborative approach through both its MSRs and other proactive stakeholder processes has proven to be effective as evidenced by the following reorganizations of special districts (which have included consolidations, dissolutions and mergers) approved by the Commission over the past 20 years:

- (1) Dissolution of Capistrano Beach Sanitary District; Annexation to Capistrano Beach Water District;
- (2) Reorganization of Garden Grove Sanitary District; Dissolution of Garden Grove Sanitary District as an independent special district; formation of Garden Grove Sanitary District as a dependent district to the City of Garden Grove;
- (3) Dissolution of the Carpenter Irrigation District; Annexation to Irvine Ranch Water District;
- (4) Consolidation of the Tri-Cities Municipal Water District with Coastal Municipal Water District;
- (5) Reorganization of four special districts (South Coast Water District Reorganization);
- (6) Consolidation of Los Alisos Water District with Irvine Ranch Water District;
- (7) Consolidation of Coastal Municipal Water District with Municipal Water District of Orange County;
- (8) Merger of Capistrano Valley Water District and City of San Juan Capistrano;
- (9) Consolidation of Santiago Water District with Irvine Ranch Water District;
- (10) Dissolution of the Laguna Niguel Community Services District;
- (11) Dissolution of County Service Area 25 (Aliso Viejo);
- (12) Acquisition of the Orange Park Acres Mutual Water Company by Irvine Ranch Water District and annexation of that territory.

Finally, the Commission acknowledges its legislative charge to encourage the orderly formation and development of local agencies and will continue to address it through conducting reviews of municipal service delivery in Orange County and establishing spheres of influence for the County's 34 cities and 35 special districts. The Commission notes that changes of organization can be complicated and often expensive processes. In particular, potential consolidations require a deliberate process facilitated by OC LAFCO that provides transparency regarding agency and community benefits for consolidation. These processes should not be constrained or hurried by defined timelines.

*F.3 OC LAFCO discontinued its Unincorporated Islands Program, Unincorporated Islands Incentive Program, and Stakeholder Plan, all of which enabled it to streamline and fast-track the annexation process.*

**Response:** OC LAFCO partially disagrees with this finding. OC LAFCO has not discontinued its Unincorporated Islands Program. While the effort has not been solely referred to as the "Unincorporated Islands Program," the proactive and streamlined effort involving annexation of islands has not been discontinued and remains a priority for the Commission. The Commission continues many of its longstanding approaches to streamlining the processing of island annexation applications, which include waiver of OC LAFCO application fees, maintenance of the Unincorporated Islands Handbook and

website page, dedicated OC LAFCO staff assistance to cities to help prepare OC LAFCO application materials and facilitation of stakeholder meetings to discuss annexations. More recently, at the 2015 Strategic Planning Session, the Commission reaffirmed its support for the Commission's proactive role in carrying out the streamlined island annexation program started by OC LAFCO 15 years ago. The Commission subsequently adopted the "Unincorporated Areas Work Plan" (included in FY 2015-2016 Work Plan) which focuses on unincorporated areas with potential success for annexation and are supported by County and City leadership and staff. The process for transitioning islands from County jurisdiction to an adjacent city requires extensive conversations and cooperation that extends beyond waiving of application fees and preparation of application materials. Discussions are essential and involve multiple stakeholders (County, cities, special districts and residents) jointly identifying ways to address service interests and needs, community identity issues, and developing feasible fiscal solutions for the integration of island communities with surrounding cities. The complexity of these issues is not something that can be fast tracked or streamlined and rather should include a process that is strategic and seeks to inform and obtain the support of affected stakeholders, which in turn increases the likelihood of success. For the past several years, OC LAFCO has taken the leadership role and has committed significant resources to this effort.

Finally, the Commission's acknowledges the impact that the diminution of staff may have on OC LAFCO's proactive leadership on this effort. However, as the Unincorporated Islands Program remains a key OC LAFCO project, the Commission will discuss commitment of staffing and consultant services required to continue its leadership on this effort during the mid-year discussion of its budget and work plan in December 2015. Staffing resources added will include a focus on unincorporated areas with potential for success as stated in the Commission's Unincorporated Islands Work Plan.

*F.6 By requiring staff to check with the Orange County supervisor in whose district an island lies before commencing an annexation proposal, OC LAFCO is risking loss of independence and objectivity.*

**Response:** OC LAFCO wholly disagrees with this finding. OC LAFCO has worked collaboratively and effectively with staff from the County of Orange and multiple cities while maintaining its role as an independent and objective Commission. In fact, over the past several years, OC LAFCO has experienced most of its success in annexing islands when there has been a concerted partnership with the County and affected cities. Transitioning islands to a city requires addressing issues that include infrastructure deficiencies (i.e., roads, code enforcement, sewer, water), service costs to cities and opposition from island residents to be moved from County jurisdiction to a city. OC LAFCO has used the participation of the five Board Offices as a resource in moving

discussions forward and in being more aware of community issues as the elected representation of the respective district. The County is a key party in island annexations and its willingness to consider the broader community needs and offer real fiscal solutions is essential. OC LAFCO's partnership with the County on this effort is not an impediment to the Commission's independence and objectivity.

*F.7 OC LAFCO discontinued the Islands Community Task Force, which has impacted its annexation efforts.*

**Response:**

OC LAFCO wholly disagrees with this finding. In 2011, the Commission formed the Islands Community Task Force as a component of the existing Unincorporated Islands Program and its overarching goal to encourage logical boundaries and the efficient delivery of services to unincorporated areas. Because annexation of these areas involves multiple layers of issues including political, fiscal, and infrastructure deficiencies, the purpose of the task force (which was comprised of three OC LAFCO Commissioners, OC LAFCO staff, and representatives from multiple cities, County CEO and Supervisorial Districts) was to develop island annexation and alternative service guiding principles and best practices. This was achieved by the task force, and at its 2012 strategic planning session, the Commission incorporated these guiding principles and best practices into the Commission's policy and Unincorporated Islands Program. Since that time, these principles and best practices have been effectively used to accomplish multiple island annexations. OC LAFCO notes, once again, that collaboration involving the County of Orange, cities and OC LAFCO and dedicated staffing and resources are a key factor in annexation efforts.

**Recommendations**

*R.1 Orange County LAFCO should proceed to identify and prioritize special district consolidations and mergers, commence the necessary studies, and then initiate the appropriate petitions or proposals. (F.1, F.2)*

**Response:** The recommendation has been implemented. Since 2002, OC LAFCO, as an independent agency, has conducted municipal service reviews (MSRs) of all agencies, including special districts, under its purview. MSRs are required to address seven (7) specific determinations (Government Code § 56430) including growth and population projections, location and characteristics of any disadvantaged communities, present and planned capacity of facilities and services, financial ability of the agencies to provide services, opportunities for shared facilities, accountability for community service needs

including governmental structure and operational efficiencies, and any other matter related to effective or efficient service delivery. Over the years, OC LAFCO has used its stakeholder-driven MSR process to identify potential opportunities for consolidations, mergers, dissolutions and other changes of organizations. The Commission has commenced studies on governance structures, fiscal analyses, and formed a committee to prepare a white paper on governance restructuring. OC LAFCO has used the MSR process as a resource to the public to better understand the service and operational infrastructures of the County, cities, and special districts. The MSR process has led to numerous governance reorganizations of special districts (which have included consolidations, dissolutions and mergers) within the past 20 years.

Over the next two years, OC LAFCO will once again embark on a planning effort to develop a program for the successful completion of the next cycle of MSRs (2018-2022) for the County's 34 cities and 35 dependent and independent special districts. As part of the 2015-2016 annual work plan, a "Scope of Work" for the MSR implementation plan will be developed. The scope will include the following tasks:

- Development of MSR guiding principles;
- Development of criteria to establish MSR focus boundaries;
- Prioritization of agencies and services to undergo MSR reviews;
- Integration of the Commission's existing programs (e.g., Fiscal Trends, Shared Services, Demographic Trends, Public Engagement, etc.); and
- Development of MSR Implementation Plan, which will include a 5-year timeline for completion of MSRs.

Even with the effective and resourceful tool of MSRs, OC LAFCO notes that consolidations, dissolutions, and mergers involve complex and expensive processes established by the government code. Related discussions should not be hurried or constrained by arbitrarily defined timelines. These processes require OC LAFCO staff and involved stakeholders to conduct detailed studies on the reorganization of any agency to address impacts on the service levels and finances of the agencies being reorganized as well as the successor agencies. These studies must then go through a public hearing and review process by both the Commission and the public. This is a critical component as residents typically have strong emotional ties with their service providers and ultimately have the opportunity to protest and end any attempts at reorganization as part of the process. Equally important is the issue of successor agencies. Given the current fiscal climate, consolidations and mergers may not be the most feasible solution to governance restructuring. As an example, cities or other potential successor agencies may not have the financial resources to "absorb" another agency's operations.

Finally, the OC LAFCO MSR stakeholder process is the appropriate vehicle to discuss governmental structures within Orange County to effectively address the diverse service needs and desires of over three million residents.

*R.2 Orange County LAFCO should revive and reinstate its Unincorporated Islands Program and Community Islands Task Force, and it should expand its Unincorporated Islands Incentive Program and Stakeholder Plan to streamline and fast-track the annexation effort. (F.3)*

**Response:** This recommendation has been implemented. The OC LAFCO Unincorporated Islands Program, which has been a key priority of the Commission since 2000, continues to include efforts to work with the County of Orange, cities and communities on the annexation of islands. Additionally, the Commission continues to waive OC LAFCO annexation fees for small island annexations as an incentive to cities, conduct community workshops, facilitate stakeholder meetings and streamline preparation of the OC LAFCO application. The initial effort in annexing the islands involved a shared commitment of resources by OC LAFCO and the County. However more recently OC LAFCO has become the primary leader on this effort while still continuing to work with County staff. More recently, the Commission included in its 2015-2016 Work Plan the "Unincorporated Areas Work Plan," which will focus on unincorporated areas with potential success for annexation and are supported by County and City leadership and staff. All stakeholders must have a willingness to consider the broader community needs and offer real fiscal solutions to the integration of island communities with the surrounding cities. Key milestones of the work plan for 2015-2016 include identifying annexation opportunities that may be successful, developing resources (i.e., fiscal profiles, update islands handbook) to assist in discussions on real fiscal solutions, and educating the public about the annexation process and municipal services.

The Commission acknowledges that implementation of the work plan may be impacted by staffing resources required for other mandated OC LAFCO projects.

*R.5 Orange County LAFCO's practice of deferring to the Orange County Supervisor in whose district an island lies should be changed to better allow OC LAFCO to fulfill its role independently and objectively. (F.6)*

**Response:** The recommendation will not be implemented as it is not warranted. OC LAFCO is governed by the procedures established in the Cortese-Knox-Hertzberg Reorganization Act of 2000 which grants the Commission the sole authority of processing changes of organization, which includes island annexations. The Commission has carried out this legislative responsibility since 1963 independently and objectively. The collaboration with the County of Orange, cities and independent special districts countywide has contributed to OC LAFCO's effectiveness involving reshaping local government boundaries that support efficient and logical municipal service boundaries.



*R.6 Orange County LAFCO should revive and reconstitute the Unincorporated Islands Community Task Force and set specific goals to expedite annexations of all remaining islands by a certain date and annexations of all large islands by another date certain. (F.7)*

**Response:** The recommendation will not be implemented as it is not warranted or reasonable. The Unincorporated Islands Community Task Force was formed by the Commission to develop island annexation and alternative service guiding principles and best practices that support logical and cost-efficient provision of municipal services. While the task force is no longer active, the guiding principles and best practices are key components of the Unincorporated Islands Program and will be utilized in the island annexation effort approved by the Commission earlier this year. Therefore, reconstituting of the Islands Task Force is not warranted.

OC LAFCO recognizes the importance of its powers granted by the Legislature to act on local agency boundary changes with one of its purposes being to *encourage* orderly formation and development of local agencies. Pursuant to Part 3, Chapter 1 (Commission Proceedings for a Change of Organization and Reorganizations) Government Code Section 56375.3 of the Cortese-Knox-Hertzberg Reorganization Act of 2000, annexations in the case of small islands (150 acres or less) may **only** be initiated by the annexing city and for large unincorporated areas may **only** be initiated by the annexing city, landowners and registered voters of the area. OC LAFCO **cannot** initiate city annexations (small or large), and therefore it is not reasonable for OC LAFCO to set certain dates to expedite annexations. Additionally, issues such as resident protests, service costs and political opposition are determining factors that impact timelines for annexations. In particular, large annexations require protest periods to allow residents to voice their opinions and oppose annexation.

Finally, OC LAFCO continues to identify the islands effort as a key project and is committed to attempting to rebuild the momentum through its current Unincorporated Islands Program. OC LAFCO's partnership with the County should involve a joint focus on islands with potential for success and other alternative solutions such as contracts for municipal services for the larger islands. Mutual commitment of resources by OC LAFCO and the County are essential in order for the islands effort to be successful. However, as noted previously, the Commission acknowledges this effort may be impacted by staffing resources required for other mandated OC LAFCO projects.

In conclusion, OC LAFCO hopes that these comments allow for a better understanding of the OC LAFCO's role and authority, in particular its powers and duties involving island annexations and initiation of special district consolidations. We appreciate the opportunity to submit these comments.

Sincerely,



Derek J. McGregor, Chairman  
Orange County LAFCO