

Lake Local Agency Formation Commission

Regular Meeting Agenda

Wednesday July 21, 2021 -- 9:30 am

This will be a Physical Meeting at the City Council Chambers in Clearlake

City of Lakeport – City Council Chambers

225 Park Street Lakeport, California

Website: www.lakelafco.org

“Lake LAFCo oversees orderly development and protects natural resources and agricultural lands”

The complete agenda, including backup materials and materials related to items on this Agenda submitted to the Commission after distribution of the Agenda Packet, is available for public inspection on the Lake LAFCo website. Agenda materials are also available on the Lake

LAFCo website at www.lakelafco.org

This will be a physical meeting but if you wish to attend via zoom, a Zoom Link is provided below:

Instructions for joining meeting via Zoom are as follows:

Topic: Lake LAFCo

Time: Jul 21, 2021 09:30 AM Pacific Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/83983226917?pwd=MWdKZE52dGVpbTYxd1I1aWxIWXBKZz09>

Meeting ID: 839 8322 6917

Passcode: 947137

One tap mobile

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Dial by your location

+1 669 900 6833 US (San Jose)

Meeting ID: 839 8322 6917

Passcode: 947137

If you have any problems dialing in call LAFCo at (707) 592-7528

This meeting is also being agendized to allow staff and the public to participate via teleconference, pursuant to the Governor's Executive Orders N-25-20 & N-29-20 and dated March 12, 2020 & March 17, 2020. These Executive Orders authorizes local legislative bodies to hold a public meeting via teleconference or other electronic means and to make public meetings accessible to telephonically to all members of the public and staff in effort to observe Social Distancing Recommendations in effect for the entire country.

"Lake LAFCo oversees orderly development and protects natural resources and agricultural lands"

Commissioners

Commission Alternate Members

Dirk Slooten, (City)
 Stan Archacki, (Special Dist.)
 Jim Scholz (Special District)
 Ed Robey, (Public Member)
 Moke Simon, Vice Chair (County)
 Bruno Sabatier Chair (County)
 Stacey Mattina (City)

Victoria Brandon (Spec. District Alternate)
 Suzanne Lyons (Public Alternate)
 Tina Scott (County Alternate)
 Russ Perdock (City Alternate)

Staff

John Benoit, Executive Officer
 P. Scott Browne, Legal Counsel
 Kathleen Moran, Clerk-Analyst

1. **Call to Order – Roll Call**
2. **Election of the Chair and Vice-Chair for FY 2021-2022**
 - a) *Election of the Chair*
 - b) *Election of the Vice-Chair*
3. **Approval of Minutes – May 19, 2021**
Action: Approve May 19, 2021 minutes
4. **Appoint Suzanne Lyons as LAFCo's public member alternate for a term ending in May 2024**
 - a) *Appoint Suzanne Lyons as LAFCo's public member alternate.*
5. **Public Comment.**

This is the time for the public to address the Commission on any matter not on the agenda. Testimony related to an item on the agenda should be presented at the time that item is considered.

6. Consent Agenda

- a. *Review and authorize payment of expenses for May and June 2021.*

7. Continued discussion regarding Domestic Water Providers in Clearlake

- a. *This item is a continued discussion of issues related to the provision of domestic water services within the City of Clearlake and provide further direction regarding the Sphere of Influence for the provision of water services within the City.*

8. Workshop regarding proposed Policy Amendment regarding a Voluntary Indemnification Agreement policy and agreement to pay fees to be added to LAFCo's Policies, Standards and Procedures.

- a) *First reading of LAFCo's proposed indemnification policy and voluntary agreement to pay fees.*
- b) *Schedule policy amendment at LAFCo's next available meeting.*

9. Workshop regarding the Lake County Cemetery Districts MSR and SOI

- a) *Conduct workshop and set public hearing regarding the MSR and SOI for the Glenbrook, Hartley, Kelseyville, Lower Lake, Middletown and Upper Lake Cemetery District.*

10. Calafco Annual Conference in Newport Beach – October 6-8, 2021

- a) **Authorize Commissioners to attend the CALAFCo Annual Conference at the Newport Beach Airport Hilton in Newport Beach.**

11. Discussion regarding the future of Zoom meeting for Lake LAFCo in light of ever changing Executive Orders and rules regarding remote meetings

12. Executive Officer's report.

- a. *South Lakeport Annexation update*
- b. *Upper Lake area MTBE (Methyl tert-butyl ether) Drinking Water Contamination*

13. LAFCo Counsel's report

14. Commissioner Reports

This item is placed on the agenda for Commissioners to discuss items and issues of concern to their constituency, LAFCO, and legislative matters.

15. Correspondence:

16. Adjourn to LAFCO's next regular meeting: Wednesday September 15th, 2021 9:30 AM in Lakeport (or zoom?)

The Commission may take action upon any item listed on the agenda. Unless otherwise noted, items may be taken up at any time during the meeting.



Any member appointed on behalf of local government shall represent the interests of the public as a whole and not solely the interest of the appointing authority Government Code Section 56325.1

Public Comment

Members of the public may address the Commission on items not appearing on the agenda, as well as any item that does appear on the agenda, subject to the following restrictions:

matter jurisdiction.

- No action shall be taken on items not appearing on the agenda unless otherwise authorized by Government Code Section 54954.2 (known as the Brown Act, or California Open Meeting Law).
- The total amount of time allotted for receiving public comment may be limited to 15 minutes.
- Any individual's testimony may be limited to 5 minutes. Time to address the Commission will be allocated on the basis of the number of requests received.

Public Hearings

Members of the public may address the Commission on any item appearing on the agenda as a Public Hearing. The Commission may limit any person's input to 5 minutes. Written statements may be submitted in lieu of or to supplement oral statements made during a public hearing.

Agenda Materials

Materials related to an item on this agenda submitted to the Commission after distribution of the agenda are available for review for public inspection at the City of Lakeport and City of Clearlake Community Development Departments office located at City Hall in Lakeport and Clearlake [such documents are also available on the Lake LAFCO website as noted below to the extent practicable and subject to staff's ability to post the documents prior to the meeting].

Accessibility

An interpreter for the hearing-impaired may be made available upon request to the Executive Officer 72 hours before a meeting. The location of this meeting is wheelchair-accessible.

Disclosure & Disqualification Requirements

Any person or group of persons acting in concert who directly or indirectly contribute \$1,000 or more in support of or in opposition to a change of organization or reorganization that has been submitted to Lake LAFCO must comply with the disclosure requirements of the Political Reform Act of 1974 applicable to local initiative measures to be submitted to the electorate. These requirements contain provisions for making disclosures of contributions and expenditures at specified intervals; they may be reviewed at Government Code §§56700.1 and 81000 *et seq.* Additional information about the requirements pertaining to local initiative measures to be presented to the electorate can be obtained by calling the Fair Political Practices Commission at (916) 322-5660.

A LAFCO Commissioner must disqualify herself or himself from voting on an application involving an "entitlement for use" (such as an annexation or sphere amendment) if, within the last twelve months, the Commissioner has received \$250 or more in campaign contributions from the applicant, any financially interested person who actively supports or opposes the application, or an agency (such as an attorney, engineer, or planning consultant) representing the applicant or an interested party. The law (Government Code Section 84308) also requires any applicant or other participant in a LAFCO proceeding to disclose the contribution amount and name of the recipient Commissioner on the official record of the proceeding.

Contact LAFCO Staff. LAFCO staff may be contacted at (707) 592-7528 or by mail at Lake LAFCO c/o John Benoit, Executive Officer P.O. Box 2694, Granite Bay, CA 95746 or by email at j.benoit4@icloud.com. Agenda packets are located on the Lake LAFCO Webpage at www.lakelafco.org

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LAKE LOCAL FORMATION COMMISSION
MINUTES
May 19, 2021

Members Participating

Bruno Sabatier, Chair, County Member
Moke Simon, Vice-Chair, County Member
Stacy Mattina, City Member
Ed Robey, Public Member
Dirk Slooten, City Member
Stan Archacki, Special Districts
Jim Scholz, Special Districts
Victoria Brandon, Special District Alternate

Staff Participating

John Benoit, Executive Officer
P. Scott Browne, Legal Counsel
Kathleen Moran, Clerk

Absent: Russ Perdock, City Alternate, Tina Scott, County Alternate, Suzanne Lyons, Public Member Alternate.

1. Call to Order - Chairman Sabatier called meeting to order at 9:40 a.m. in the City Council Chambers, City of Clearlake.

2. Approval of Minutes - Motion by Commissioner Slooten, second by Commissioner Archacki to approve the minutes of the May 19, 2021, meeting. Motion carried by the following vote:

AYES: Commissioners Slooten, Archacki, Scholz, Robey, Simon, Sabatier and Mattina.

NOES: None.

ABSTAIN: None.

3. Public Comment – None.

4. Consent Agenda

Motion by Commissioner Robey, second by Commissioner Slooten to review and authorize payment of expenses for March and April 2021. Motion carried by the following vote:

AYES: Commissioners Slooten, Archacki, Scholz, Robey, Simon, Sabatier and Mattina.

NOES: None.

ABSTAIN: None.

Present: Jeff Stanley, Board Member, Konocti County Water District
Frank Costner, Manager, Konocti County Water District
Alan Flora, City of Clearlake
Keith Ahart, Golden State Water District

5. Discussion on Domestic Water Providers in Clearlake

EO opened discussion of domestic water services within the City of Clearlake. EO reviewed report "Preliminary MSR Determinations" which contains detailed information on the water service providers. The Preliminary MSR addresses concerns which have come up in discussions at Lake LAFCo meetings regarding possible consolidation of services. EO agreed that there needs to be a point of coordination amongst the entities to foster better communications and cooperation. The entities were formed and operate under different rules, which they follow. The report details operations, finances, funding, information on

maintenance, safe drinking water and fire flows. The report includes some recommendations on the issue of shared facilities for water service providers in Clearlake, local accountability and governance. It further includes a recommendation that the districts work with each other as much as possible to provide better and more dependable service. EO noted that in compiling information for this report, all three entities were responsive to requests for information and that all three maintain current information available to the public on their websites.

After going through each point of the Preliminary MSR Determinations, EO concluded that there is no compelling reason one service provider should be replaced with another service provider or service provider type. Further, it is unclear if consolidation of service providers will result in cost savings. Commissioner Slooten expressed disagreement that consolidation would not result in cost savings.

Extensive discussion was held on the report. Commissioners agreed that uniform testing needs to occur through coordinated efforts by the water providers and the fire districts. Funding sources for improvements, replacement and repairs were discussed, as was the availability and use of grant monies.

EO noted that if the Commission was interested in pursuing consolidation much more information and review would be required. However, LAFCo would not be the appropriate entity to initiate consolidation. EO stated that the city should take the lead if they wanted a consolidation of water service.

Extensive discussion was held on rates, hydrant testing, fire flow data, map inconsistencies and inaccuracies. Regarding the map issues, EO stated that he is working on it with the involvement of the Yolo County Flood Control District, noting that all the maps require updating and that it is a priority. Discussion to be continued until the next LAFCo meeting.

6. Public Hearing Final LAFCo Budget FY 2021-2022

Chair opened public hearing. No comments heard. Chair closed hearing.

Motion by Commissioner Slooten, second by Commissioner Scholz to adopt Resolution No. 2021-0007 A Resolution of the Lake Local Agency Formation Commission Adopting its Final Budget for 2021-2022 and authorizing the Chair to sign. Resolution passed and adopted by the following vote:

AYES: Commissioners Slooten, Archacki, Scholz, Robey, Simon, Sabatier and Mattina.

NOES: None.

ABSTAIN: None.

7. Contract Amendments with John Benoit for Staff Services and Scott Browne for Legal Services

Motion by Commissioner Mattina, second by Commissioner Robey to amend and consider sixth amendment to the January 2003 contract for Executive Officer Services regarding applicant-initiated contracts regarding reimbursement of costs thereby amending Sections 2.1.2 and 2.2.2 and authorize the Chair to sign. Motion carried by the following vote:

AYES: Commissioners Slooten, Archacki, Scholz, Robey, Simon, Sabatier and Mattina.
NOES: None.
ABSTAIN: None.

Motion by Commissioner Mattina, second by Commissioner Robey to amend and consider fifth amendment to the July 2014 contract between P. Scott Browne for legal services thereby amending compensation amounts in Section II Paragraphs A and B. Motion carried by the following vote:

AYES: Commissioners Slooten, Archacki, Scholz, Robey, Simon, Sabatier and Mattina.
NOES: None.
ABSTAIN: None.

8. Executive Officer' s report.

- a. Cemetery District MSR and SOI for July 21 meeting
- b. South Lakeport Annexation update
- c. Upper Lake area MTBE (Methyl tert-butyl ether) Drinking Water Contamination
- d. Updated Fee Deposit Schedule

9. Mr. Browne updated the Commission on the status of San Luis Obispo v City of Pismo Beach.

10. Commissioner Reports

Commissioner Slooten suggested some Sphere of Influence changes for Clearlake.

11. Correspondence – None.

11:45 a.m. Meeting adjourned.

Next regular meeting: Wednesday July 21, 2021 9:30 a.m. in Lakeport.

By: Kathleen Moran, Clerk

Lake Local Agency Formation Commission

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CLAIMS May and June 2021

Expenses for FY 2020-2021:

<u>Date of Claim</u>	<u>Description</u>	<u>Amount</u>
4.16.21 - 5.15.21	Browne Legal	\$ 525.00
May 19, 2021	Meeting Stipend	\$ 480.00
June 1, 2021	Staff Svcs May 2021	\$ 6,537.00
May 21, 2021	MRG Facilitation So Lkpt	\$ 2,725.00
June 7, 2021	MRG Facilitation So Lkpt	\$ 1,125.00
5.16.2021 - 6.15.21	Browne Legal	\$ 1,837.00
July 1, 2021	Staff Svcs June 2021	\$ 4,947.67
July 1, 2021	MSR and SOI Spec Project	\$ 6,215.00
TOTAL:		\$ 24,206.34

Expenses for FY 2021-2022:

July 1, 2021	Calafco Dues FY 21-22	\$ 1,889.00
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DATED: July 21, 2021

APPROVED: July 21, 2021

Bruno Sabatier, Chair
Lake Local Agency Formation Commission

Attest:

John Benoit
Executive Officer

July 15, 2020 Payroll	\$ (540.00)																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																	</
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PRELIMINARY MSR DETERMINATIONS

MSR Determinations on Growth and Population Projections for the Clearlake Area

- MSR 1-1) The Konocti County Water District, the Highlands Mutual Water Company and Golden State Water Company (herein referred to as the "Clearlake Water Providers") are located entirely within the City of Clearlake and the City has jurisdiction over growth, planning and development review.

MSR Determinations on Disadvantaged Unincorporated Communities near water service providers within Clearlake

- MSR 2-1) The areas served by the Clearlake Water Providers are **located** within the City of Clearlake, which is both a Disadvantaged Community and Severely Disadvantaged Community since the median household income is \$30,318 compared with the state of California median household income of \$67,169.

MSR Determinations on Capacity and Infrastructure for Konocti County Water District

- MSR 3-1) The Clearlake Water Providers are continuously working to improve their water treatment and delivery system. The water providers have the capacity and entitlements to provide water service. The water providers currently have the source, treatment and storage capacity to serve their respective territory. This is a result of continuous improvements.
- MSR 3-2) In Clearlake, Fire Flow Testing is conducted by the Clearlake Water Providers. The Clearlake Water Providers **should** together for consistency purposes **establish a schedule for Fire Flow testing. For example, testing when new development is proposed or on a bi-annual basis notwithstanding a drought.**
- MSR 3-3) **The Clearlake Water Providers, the City of Clearlake, and the Lake County FPD need to continue to cooperate in the Development review and entitlement processes including building and planning codes with the City taking the lead.** Development review should include improved interaction with the fire department, water providers and the County. Careful consideration in requiring adequate fire flows should be required as determined by the Fire Protection District and **improvements must be constructed and be paid for prior to new development.**
- MSR 3.4 **Fire Flows are of concern in various areas throughout the City. While improvements are continuously being made to components of the various water systems in the City the problem of substandard fire flows continue to**

exist. Inadequate fire flow problems are addressed when there is adequate funding and a compelling need for improvements.

MSR 3-5 **The Clearlake Water Providers realize improvements for new development must be paid by new development since in most cases grant money is not available to any water provider to pay for upgraded infrastructure to support new development (an exception might be grant money for job creation). Also, those costs should not be underwritten by existing customers.**

MSR 3-6 **The Konocti County Water District is eligible to receive government grants and loans on behalf the District. The Highlands Mutual Water Company and the Golden State Mutual Water Company are not by themselves eligible to obtain government grants. However, in a partnership with the City or other public agency, grants might be able to be obtained to address health and safety concerns and the provision of safe and a reliable supply of water in problematic areas. Grants are rarely given for new development excepting in cases where creation new jobs is a condition of the grant and a public agency takes the lead in securing the grant.**

MSR 3-7 **The City of Clearlake has applied to the State Water Resources Control Board for technical assistance to collaborate with the fire district and local water providers.**

MSR 3-8 **It is recommended under the leadership of the City, a JPA or Special Collaboration group be established to review development proposals and make recommendations, as appropriate regarding domestic water issues of concern.**

MSR determinations regarding Finances

MSR 4-1) **The water providers maintain adequate finances to operate and comply with applicable laws requiring a budget and an audit in a timely manner.**

MSR 4-2 **The water providers periodically update their fee schedules. A component in updating a fee schedule is to maintain annual comparisons with other agencies within Lake County and to analyze needs and costs to adequately maintain and run the water system.**

MSR 4.3 In reviewing basic water provider charges for water services provided in Clearlake the following basic charges exist:

Konocti County WD	Monthly	\$34.50	0.04 per cf (\$4.00 per 100cf)
Highlands Water	Monthly Base Charge	\$36.30 5/8 Inch \$51.70 ¾ inch	\$5.30 per 748 gallons (or 100 cf)
Golden State Water	Monthly	40.25	\$8.25 per 748 gallons (or 100cf)

MSR 4.4 Of the three water providers entirely within Clearlake the Konocti County Water District (KCWD) has the lowest monthly base charge at \$34.50 per meter and the Golden State Water Company (GSWC) is the highest at \$40.25 per meter. Charges for 100 cubic feet of water are \$4.00 for the KCWD, \$5.30 for Highland Mutual Water Company (HMWC) and \$8.25 for the GSWC (subject to CPUC approval). The GSWC has a low-income assistance program with oversight by the CPUC's Low Income Oversight Board established by special legislation.

MSR 4-5 **The Konocti County Water District has annual audits prepared and complies with state laws regarding district auditing** for a California District and the Highlands Mutual Water Company's most recent audit for the year ending December 2019 and the PUC ensures financial audits are prepared for Public Utilities such as the Golden State Water Company. No adverse findings were found in the audits prepared for the Highlands Mutual Water Company and the Konocti Co. Water District.

MSR 4-6 **The Konocti County Water District is successful in obtaining grant funding to upgrade facilities for existing customers.** Grants might be able to be obtained for Golden State Mutual Water Company and the Highlands Mutual Water Company in a partnership with a governmental agency in areas where safe and reliable water supply is threatened.

MSR Determinations on Shared Facilities for Water Service Providers in Clearlake

MSR 5-1) The Highlands Mutual Water Company and the Golden State Water Company and the Konocti County Water District work with each other as much as possible to provide better and more dependable service.

MSR 5-2) **The Konocti County Water District has two interties with Highlands and soon to be Lower Lake CWD and the Golden State Water Company, which also has an intertie with the Highlands Mutual Water Company.**

- MSR 5-3) The water providers in Clearlake as well as the City need to work closely with the Lake County Fire Protection District to ensure adequate provisions are included for new development in Clearlake.
- MSR 5-4) Much of the water infrastructure was developed prior to the City's incorporation in 1980 and before the establishment of specific fire flow requirements for new development. The Clearlake Water providers all work to ensure adequate, safe and reliable water is available to their customers.
- MSR 5-5) The Clearlake Water Providers cooperate to provide adequate water services within areas where the principal water provider may not be able to.

MSR Determinations on Local Accountability and Governance

- MSR 6-1) The Konocti County Water District and the Highlands Mutual water company maintain a five-member board of directors, which holds regular meetings open to the public.
- MSR 6-2) The Clearlake Water Service providers **appear to be well managed** with compliance **with state laws** for their specific type of organization.
- MSR 6-3) The Clearlake Water providers maintain financial records, a budget and an audit.
- MSR 6-4) For a governmental agency, **the Konocti County Water District complies with the Brown Act, Public Records Act and the Political Reform Act.** Legal requirements vary depending upon the type of water service provider.
- MSR 6-5) **The Clearlake Water providers provided LAFCo with documents as requested in a timely manner.**
- MSR 6.6) The Clearlake Water providers all **maintain a webpage** to inform the public about the operation of the agency.
- MSR 6.7) Governance requirements for the water service providers within the City of Clearlake is not identical. The water service providers are formed and operate differently and are subject to different rules and regulations yet must comply with California water quality requirements and standards.
- MSR 6.8) Yolo County Flood Control and Water Conservation District has the water rights to Clearlake **for water above 7.2 to zero on the Rumsey Scale.** Each water service provider has a water rights agreement that specify the location and amount of water to be taken from Clear Lake. There are areas where one service provider is providing water service within the geographic area of another service

provider. This happens because water service is best provided by one given provider in specific areas. It does not appear there is a desire to encroach into other service provider's territory to increase the number of connections.

MSR 6.9 For agencies subject to LAFCo's jurisdiction LAFCo establishes the service area and Sphere of Influence. For all water providers in Clearlake, service areas as established by a specific water rights agreement with Yolo County Flood Control. It is recommended that as water rights agreements be renewed and updated at the same time. Yolo County Flood Control should carefully review service areas and reconcile service areas with actual services being provided and eliminate overlapping service areas and eliminate service area gaps.

MSR 6.10 **Further information is needed prior to a determination regarding a change of organization regarding water service providers, The financial and operational changes need to be thoroughly vetted. At this time it is unclear if a consolidation of service providers will result in cost savings or more cost effective and operationally efficient service delivery. The rate payers (customers) need to be given the opportunity to vote on proposals that may result. Prior to any change of organization effort additional information is required.**

PRELIMINARY SPHERE DETERMINATIONS

Determinations on Present and Planned Land Uses In the area:

- 1.1 The City of Clearlake has recently prepared an updated General Plan, Housing Element and Zoning Ordinance. LAFCo in its 2015 Sphere Update, recommended the City's Sphere of Influence remain coterminous with its boundaries.
- 1.2 The City is the Land Use Authority for territory within its jurisdiction. The City has the authority to review and to issue all land use entitlements within its jurisdiction.

Determinations regarding present and probable need for public facilities and services in the area

- 2.1 Notwithstanding limited financial resources, the City provides adequate services for services it provides.
- 2.2 The City should take a proactive role in the issuance of development entitlements to ensure the provisions of adequate safe and reliable fire, wastewater and water services. This may be in the form of leading a coordination effort to resolve existing and anticipated deficiencies.

- 2.3 The City does not provide fire, wastewater or water services within its jurisdiction and therefore with the exception of its land use authority has limited ability to control or manage these services. The City should actively participate with those service providers where deficiencies exist and coordinate with those providers to resolve problems as they arise.**

The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide.

- 3.1 While the City is not the current water provider within its jurisdiction, a city may provide domestic water services. Likewise, a County Water District, a Mutual Water Company or a Public Utility may provide water services for customers within the entire city.**
- 3.2 Water services are generally adequate within the City of Clearlake. That is not to say deficiencies exist such as substandard fire flows in various parts of the City.**
- 3.3 While the water providers coordinate with each other, it appears to be a duplication of effort with three water providers providing similar services within Clearlake.**
- 3.4 Additional analysis will be needed to determine the best or optimum water service provider.**

Sphere Determinations on Social or Economic Communities of Interest

- 4.1 The water providers are all located within the City of Clearlake and are all members of the same community of interest. Likewise, most of the population and structures within the Lake County Fire Protection District are located within the City of Clearlake.**

Sphere Determinations regarding Disadvantaged Communities.

- 5.1 The area within the City of Clearlake is considered a disadvantaged Community meaning the median household income is less than 80% of the State median household income. Many areas of the City are considered severely disadvantaged meaning the median household income is less than 60% of the State's median household income.**

Lake LAFCo

MEMORANDUM JULY 21, 2021

TO: Lake LAFCo Commissioners
FROM: John Benoit, Executive Officer
RE: Proposed policy Amendments regarding Indemnification agreements and application options

Attachment #1 Counsel's Memo regarding Indemnification agreements March 16, 2021
Attachment #2 Proposed Policy Amendments
Attachment #3 Proposed Voluntary Indemnification Agreement

Historically, applications to Lake LAFCo have required the applicant, either an agency or a private party, to indemnify LAFCo as a component of the LAFCo "Agreement to Pay" form. The Agreement clearly indicates that should a LAFCo action be legally challenged, the applicant will be required to defend the LAFCo action or reimburse LAFCo for all related costs.

Most LAFCo's throughout the state also use various forms of indemnification agreements and have successfully managed legal challenges to the local LAFCo decision. This was an effective tool until this year when the San Luis Obispo LAFCo's use of an indemnification agreement was successfully challenged by the City of Pismo Beach (*San Luis Obispo LAFCo v. City of Pismo Beach, et.al.* 2021 WL 803740) (the SLO case). LAFCo Legal Counsel has prepared a memorandum (Attachment 1) that fully describes the case and its ramifications to LAFCo's throughout the state. Since Council's memo was written the California Supreme Court has denied review.

LAFCo's will need to adopt an alternative process for addressing the use of indemnification agreements as they are 1) critical to the integrity and implementation of a LAFCo decision and 2) to appropriately place the costs on the applicant and not the LAFCo member agencies who fund the budget.

While Lake LAFCo has historically not been involved in significant litigation, one single legal challenge could create a budget crisis for future years.

Policies, Standards and Procedures Amendment Needed. Lake LAFCo's Policies, Standards and Procedures were adopted on September 16, 2020 prior to the SLO case. It is apparent a

policy amendment is needed. The procedure for a Policy Amendment is the same as for a Bylaw Amendment as follows:

Section 9 of LAFCo's amendment procedure

- a) The full text of any proposed amendment shall be sent to all members in the same manner as agenda packets, as specified in Section 5.3 c), above.
- b) At the meeting, the proposed amendment shall be read aloud in its entirety by the Chair, unless such reading is waived by the Commission. Discussion may occur and modifications be made to the proposed amendment, but it may not be approved at that first reading.
- c) The proposed amendment to the Bylaws, with any Commission modifications, shall then be circulated to the following entities for their review and comment prior to adoption:
 - City of Clearlake
 - City of Lakeport
 - County of Lake
 - Special Districts requesting notification
- d) The proposed amendment, with any modifications, shall be agendized and read a second time at the next regular meeting of the Commission, unless the Commission waives such reading. Any comments received from local agencies shall be presented. Further discussion and modifications may be made to the proposed amendment and it may be adopted at this second reading.

Recommendation:

1. Read the proposed amendment and voluntary indemnification agreement unless otherwise waived.
2. Discuss and review the proposed policy amendment and voluntary indemnification agreement.
3. Circulate the proposed amendment and voluntary indemnification agreement for comments.
4. Set the proposed amendment at next available LAFCo meeting for a second reading of the amendment and voluntary indemnification.

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July 13, 2021

Memorandum re Decision in *San Luis Obispo LAFCo v. City of Pismo Beach*

Dear LAFCo Staff and Commissioners:

This memorandum is to alert you to a very recent case (March 3, 2021) out of the Second District Court of Appeal which may have significant implications for how LAFCo's handle indemnification for fees incurred in legal challenges to LAFCo actions. The case is *San Luis Obispo LAFCo v. City of Pismo Beach, et.al.* 2021 WL 803740.

The decision in that case is not yet final. It could be appealed to the California Supreme Court or it could be determined to decertify it for publication. In the latter case, it would not become part of the reported caselaw. However, out of an abundance of caution, I think it is important you are aware of it as there is a significant possibility it will become law.

In that case, San Luis Obispo LAFCo (SLO LAFCo) sued the City of Pismo Beach and the developer for its \$400,000 in attorney's fees incurred in successfully fighting the Defendants challenge to its denial of an annexation to the City. The claim for fees was based on the indemnification agreement signed by the City and developer as applicants for the annexation.

Defendants challenged LAFCo's right to attorney's fees on a variety of grounds. Their primary focus was on the validity of the requirement they indemnify LAFCo for their own suit challenging LAFCo's action. They argued this was a basic violation of due process and their right to petition for redress.

The Court of Appeal did not, however, limit its decision to this one situation. Rather the Court held that an agreement to pay indemnification requires consideration. LAFCo has a statutory duty to process applications, so absent statutory authority, it cannot require indemnification as a condition for processing an application. The Court found that the existing statutory authority for LAFCos to charge fees, Gov't C § 56383 of the Cortese-Knoz-Hertzberg Local Government Reorganization Act of 2000 (CKH) only applied to costs associated with the administrative process and ended once a certificate of completion was filed. Costs incurred after the completion of the administrative process were not authorized by §56383. Hence there was no authority to require payment of the fees incurred after completion of the administrative process.

LAFCo argued that CKH Section 56107 requires liberal construction of the statutes. The Court rejected this argument as liberal construction cannot prevail against the express language of the 56383. It also rejected an argument that LAFCo had implied powers to impose an indemnification agreement. It rejected this argument because Code of Civil Procedure §1021 limits award of attorney's fees to those situations where they are specifically authorized by statute or by the agreement between the parties. Here there is no statutory authority and no valid agreement to pay the fees.

Memo re San Luis Obispo LAFCo v. City of Pismo Beach
July 13, 2021
Page 2

If this case becomes reported law, it is likely to upset the present practice of requiring indemnification agreements as part of the LAFCo application. Such agreements would be challenged based on this case, and the outcome highly uncertain.

Without enforceable indemnification agreements, LAFCo would have to plan on funding the defense of any litigation out of its own reserves. If it has inadequate reserves, then it must either borrow from the County if permitted by the Board of Supervisors or curtail its defense.

Other alternatives being explored are 1) to require the applicant to post a deposit for future attorney's fees at time of application, or 2) require the applicant to post a bond in lieu of a deposit. In either case, the burden on the applicant would be significantly increased.

I will keep you posted as this case progresses and we will look to modify LAFCo application procedures if necessary.

Please let me know if you have any questions.

Sincerely

P. Scott Browne
LAFCo Counsel

Proposed Policy Amendment Language:

Replace 6.4 (c) (under application Requirements)

The application shall also include an agreement to pay costs and indemnification. The agreement to pay costs and indemnification must be signed by the applicant for the application to be deemed complete.

Replace with:

6.4 (c)

6.4 c 1: **Agreement to pay fees.** The application shall also include an agreement to pay costs. The agreement to pay costs must be signed by the applicant for the application to be deemed complete.

6.4 c 2: **Voluntary Indemnification Agreement.** As part of the application, applicant shall be asked to sign and submit the voluntary indemnification agreement approved by the Commission concurrent with the adoption of this policy for all reasonable expenses and attorney fees incurred from proceedings brought by a third party in connection with the application. While LAFCo retains the discretion in all cases to decide whether to defend an action, the Applicant's voluntary agreement to indemnify LAFCo will provide applicant an opportunity to have significant input on LAFCo's decision whether to defend its decision.

**Lake LAFCo
Voluntary Indemnification Agreement**

LAFCo may not condition acceptance of an application upon requiring the Applicant to indemnify LAFCo. However, LAFCo has complete discretion whether to defend any lawsuit that is filed to challenge its decisions. With its limited budget, LAFCo will usually be reluctant to allocate resources to defend challenged decisions. If the Applicant desires to assure that LAFCo will consult with Applicant before determining how to proceed on a legal challenge and increase the likelihood that LAFCo will defend its decision on Applicant's proposal, Applicant may enter into the following voluntary contractual agreement to indemnify LAFCo in the event of legal challenge:

1. FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged. The Applicant shall defend, indemnify and hold harmless, LAFCo, its agents, officers, attorneys, and employees from any claim, action, or proceeding brought by a third party, the purpose of which is to attack, set aside, void, or annul LAFCo's decision with respect to Applicant's proposal or any required findings or determinations under CEQA made as part of that decision. This indemnification obligation shall include, but not be limited to, damages, costs, expenses, attorney's fees, or expert witness fees that may be asserted by any person or entity other than the applicant, arising out of or in connection with LAFCo's approval of the Applicant's proposal, whether or not there is concurrent, passive, or active negligence on the part of LAFCo, its agents, officers, attorneys, employees and contractors/consultants.
2. Applicant agrees that LAFCo shall have the right to appoint its own counsel to defend it and conduct its own defense in the manner it deems in its best interest subject to the provisions of this agreement, and that such actions shall not relieve or limit Applicant's obligations to indemnify and reimburse defense costs.
3. In exchange for such indemnity, LAFCo agrees to the following:
 - a. To immediately notify the Applicant of any litigation or administrative proceeding with respect to the Applicant's application in which LAFCo is named as a party.
 - b. In the event that the Applicant is not joined in the action or proceeding, LAFCo agrees to support a motion by the Applicant to intervene in the action or proceeding.
 - c. To consult with Applicant before making any decision whether to defend the legal challenge. If Applicant desires to defend the case and confirms in writing its commitment to reimburse LAFCo for its defense costs and provides a deposit for such costs as LAFCo shall reasonably determine, LAFCo will proceed to defend unless it has reasonable cause not to do so. If a determination is made to defend the action, LAFCo counsel will consult and reasonably cooperate with Applicant's counsel in the defense of the action. LAFCo shall not enter into any settlement of all or a part of the action without consulting with Applicant.

APPLICANT:

☐ I/We have reviewed the Voluntary Indemnification Agreement and choose not to sign.

☐ I/We have reviewed and agree to the Voluntary Indemnification Agreement as presented above.

Date: _____

By: _____
Project Proponent Authorized Signer

Lake LAFCo:

Date: _____

By: _____
John Benoit, LAFCo Executive Officer



2021 ANNUAL CONFERENCE OCTOBER 6 - 8 IN NEWPORT BEACH REGISTRATION FORM

For Registration by Check

To pay with credit cards please visit www.calafco.org

REGISTRATION DEADLINE IS SEPTEMBER 17, 2021

LAFCo	Received	Check #

CONFERENCE REGISTRATION RATES

	PAYMENT Received by August 31	PAYMENT Received after August 31	Amount Due
Member - Full Conference	\$520	\$560	
Non-member - Full Conference	\$620	\$660	
Guest/Spouse* - All Meals	\$270	\$300	
Guest/Spouse* - Wed Reception/Thu Banquet Only	\$155	\$200	
Member - One Day (<input type="checkbox"/> Wed or <input type="checkbox"/> Thur or <input type="checkbox"/> Fri)	\$350	\$370	
Non-Member - One Day (<input type="checkbox"/> Wed or <input type="checkbox"/> Thur or <input type="checkbox"/> Fri)	\$450	\$470	
LAFCo 101 (no charge for those with full conf. registration. \$40 for those just attending this session.)	\$40	\$40	
TOTAL REGISTRATION RATE DUE			\$

*Guests at meals must purchase their meal. Conference registration meals are non-transferable to guests.

Payment must accompany registration. Early registration rate payments MUST be received by August 31 in order for that rate to apply. NO EXCEPTIONS. Please make checks payable to "CALAFCO."

Mail completed forms and payment to:

CALAFCO
1020 12th Street, Suite 222
Sacramento, CA 95814

Hotel Information: **Hyatt Regency Newport Beach conveniently located at the John Wayne Airport**

ROOMS STARTING AT \$194 PER NIGHT. CUT-OFF DATE IS SEPTEMBER 6, 2021. Special rate 3 days pre and post conference based on availability. Rate includes parking and excludes taxes.

TO MAKE HOTEL RESERVATIONS, PLEASE VISIT:
<https://www.hyatt.com/en-US/group-booking/SNAR/JG-CAL2> or call directly at 949-975-1234 and reference CALAFCO event.

CANCELLATION AND REFUND POLICY

1. Registrations are considered complete upon receipt of fees.
2. Cancellation requests made in writing and received by September 21, 2021 receive a 100% refund less \$25 handling fee and any transaction fees.
3. Credits are not issued for any cancellations.
4. Registration fees are transferable to another person not already registered provided the request is received in writing. Deadline to transfer registrations is September 30, 2021.
5. Registration fees for guests and special events are not transferable and are fully refundable (minus any transaction fees) if requests are made in writing and received by September 21, 2021 or if the special event is cancelled.
6. Cancellation requests must be made by e-mail the CALAFCO office.
7. Cancellation requests made after September 21, 2021 are not eligible for a refund.

Please submit one form for each person registering

FIRST NAME	LAST NAME
NAME ON NAME TAG	
LAFCO/ORGANIZATION	POSITION
GUEST NAME (For guest/spouse registration)	
MAILING ADDRESS	
CITY	ZIP
PHONE #	
E-MAIL ADDRESS	
EMERGENCY CONTACT NAME:	
PHONE #	



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42) Executive Order N-29-20, Paragraph 3, is withdrawn and replaced by the following text:

Notwithstanding any other provision of state or local law (including, but not limited to, the Bagley-Keene Act or the Brown Act), and subject to the notice and accessibility requirements set forth below, a local legislative body or state body is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body or state body. All requirements in both the Bagley-Keene Act and the Brown Act expressly or impliedly requiring the physical presence of members, the clerk or other personnel of the body, or of the public as a condition of participation in or quorum for a public meeting are hereby waived.

In particular, any otherwise-applicable requirements that

- (i) state and local bodies notice each teleconference location from which a member will be participating in a public meeting;
- (ii) each teleconference location be accessible to the public;
- (iii) members of the public may address the body at each teleconference conference location;
- (iv) state and local bodies post agendas at all teleconference locations;
- (v) at least one member of the state body be physically present at the location specified in the notice of the meeting; and
- (vi) during teleconference meetings, a least a quorum of the members of the local body participate from locations within the boundaries of the territory over which the local body exercises jurisdiction

are hereby suspended.

A local legislative body or state body that holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements set forth below, shall have satisfied any requirement that the body allow members of the public to attend the meeting and offer public comment. Such a body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

Accessibility Requirements: If a local legislative body or state body holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the body shall also:

- (i) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the Americans with Disabilities Act and resolving any doubt whatsoever in favor of accessibility; and
- (ii) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to subparagraph (ii) of the Notice Requirements below.

Notice Requirements: Except to the extent this Order expressly provides otherwise, each local legislative body and state body shall:

- (i) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by the Bagley-Keene Act or the Brown Act, and using the means otherwise prescribed by the Bagley-Keene Act or the Brown Act, as applicable; and
- (ii) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in such means of public observation and comment, or any instance prior to the issuance of this Order in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of such means, a body may satisfy this requirement by advertising such means using "the most rapid means of communication available at the time" within the meaning of Government Code, section 54954, subdivision (e); this shall include, but need not be limited to, posting such means on the body's Internet website.

All of the foregoing provisions concerning the conduct of public meetings shall apply through September 30, 2021.

43) Executive Order N-32-20:

- a. Paragraph 1;
- b. Paragraph 2; and
- c. Paragraph 3.

44) Executive Order N-35-20:

- a. Paragraph 2; and
- b. Paragraph 12.

45) Executive Order N-39-20:

- a. Paragraph 2;
- b. Paragraph 3; and
- c. Paragraph 6.