

To Be Sued or Not to Be Sued, That is the Question

CALAFCO Staff Workshop
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Presenters

- Pending Litigation
- Recent Decisions
- Risk Management
- Preparing for Litigation
- Defending Litigation
- How Long Does This All Take?
- Are There Alternatives?

Agenda

- *Central Coast Development Co. v. San Luis Obispo LAFCO*
 - LAFCO denied annexation to Pismo Beach for inadequate water supply based on independent study despite City EIR finding no water impacts
 - Developer sued to review the decision and for civil rights damages
 - LAFCO prevailed at trial; no appeal
 - LAFCO denied fees under indemnity agreement; appeal pending in 6th DCA

Pending Litigation

- *City of Coronado v. City of Imperial Beach and San Diego LAFCO*
 - Coronado demanded LAFCO review Imperial Beach / Navy contract for sewer service
 - LAFCO found it exempt as service provided before 2001 and as between two agencies
 - Coronado sued; Imperial Beach brought Navy in, Navy removed to federal court in San Diego
 - Litigation still in the pleading stage

Pending Litigation

- *Northern Inyo Healthcare District and Inyo LAFCO v. So. Mono Healthcare District*
 - SMHD provided orthopedic services in Bishop since 2003 with agreement of NIH
 - When SMHD opened a new, larger clinic in 2015, NIH and Inyo LAFCO demanded SMHD seek LAFCO approval
 - SMHD claims Healthcare District Law trumps GC 56133
 - Trial on March 3d in Sacramento Superior Court

Pending Litigation

- *City of Selma v. Fresno County LAFCO* (2016) 1 Cal.App.5th 573
 - City challenged annexation to neighboring City
 - LAFCO won at trial and City appealed
 - Court of Appeal held the 70-day time limit for continued public hearing is directory and not mandatory, so the decision stood even though the hearing was late

Recent Court Decisions

- *City of Patterson v. Turlock Irr. Dist.*
(2014) 227 Cal.App.4th 484
 - City asked LAFCO to initiate its annexation to TID, which provides electric service to the City
 - TID exercised its statutory right to terminate the proceeding
 - City sued, but trial court concluded TID's rights were lawfully exercised
 - Court of Appeal affirmed.

Recent Court Decisions

- *Protect Agricultural Land v. Stanislaus County LAFCO* (2014) 223 Cal.App.4th 55
 - Challenge to CEQA compliance for City SOI amendment and annexation
 - Trial court granted judgment to LAFCO and the City because the challengers failed to publish the summons as required for validation challenges to annexation
 - Court of Appeal affirmed

Recent Court Decisions

- *Habitat and Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277
 - CEQA challenge to EIR for amendment to City SOI to allow water and sewer service to UC Santa Cruz campus development
 - Trial court upheld EIR
 - Court of Appeal reversed on one point: EIR failed to discuss feasible alternative to lessen impact on City's water supply

Recent Court Decisions

- Include a good indemnity agreement in your application form
- Bind both the applicant agency and the developer
- Consider whether separate counsel are required for the applicant agency and LAFCO

Risk Management: Indemnity Agreements

- Because our decisions matter
- Because our decisions often come at the end of the process when other deadlines for challenge have run
- Because our CEQA compliance is often done by others who are not as careful as we are
- If we make a procedural error

Why LAFCOs get sued

- Always tender claims to your risk pool or insurer.
- While land use fights are rarely covered, it is far better to ask and get denied than to explain why you did not.
- SLO LAFCO got coverage because a civil rights claim was stated — even though that claim was not very persuasive.

Risk Management: Insurance

- Sometimes people sue because they're mad or did not feel respected or heard
- How you conduct yourself matters
- Remember GC 56325.1:
 - While serving on the commission, all commission members shall exercise their independent judgment on behalf of the interests of residents, property owners, and the public as a whole in furthering the purposes of this division. Any member appointed on behalf of local governments shall represent the interests of the public as a whole and not solely the interests of the appointing authority. This section does not require the abstention of any member on any matter, nor does it create a right of action in any person.

Risk Management

- Any decision might be the subject of litigation, so it is a good idea to do thorough reports and make good findings supported by record evidence as a routine practice.
- Still, the riskier projects tend to identify themselves
- Talk to your counsel early and often about those
- Make a good record

Preparation for Litigation

- What Claims are Most Common?
 - CEQA
 - Cortese Knox Hertzberg
 - Civil Rights Claims
 - Public Records Act
 - Brown Act
 - Political Reform Act and Other Conflict Laws

Preparation for Litigation

- Most common claims seek a writ of mandate
- Such cases are reviewed on your administrative record
- The standard of review is more deferential under CKH and CEQA than on civil rights claims or the PRA or Brown Act

Preparation for Litigation

- CKH Standard of Review
 - The standard is substantial evidence: was there any meaningful evidence before LAFCO to support each finding
 - Absence of procedural error
 - Absence of fraud or prejudicial abuse of discretion
- CEQA Standard of review
 - Substantial Evidence
 - Procedural Error
 - Prejudice

Preparation for Litigation

- Thus, preventing litigation can be summarized as
 - Avoid procedural error
 - Ensure there is substantial evidence to support every required finding
- Common procedural errors
 - Notice
 - Making all the findings and tying findings to evidence
 - Allowing a fair hearing, avoiding bias and conflicts of interest

Preparation for Litigation

- **First Steps**

- Select Counsel
- Consider joint defense and confidentiality agreements among multiple parties or counsel on the same “side” of the case
- Consider whether separate counsel are needed for LAFCO and the applicant or affected agency
- Be careful about litigating in the media
- Keep your Commission informed

Defending Litigation

- Trial court litigation of a writ is relatively fast – 6 to 9 months in most courts
- Appellate litigation is usually about 18 months from start to finish, but can be faster or slower depending on the Court of Appeal
- Supreme Court review is decided 60 – 90 days after the DCA opinion
- If review is granted, Supreme Court takes a year or two, and sometimes three

How long does this all take?

- Settlement
- Mediation
 - Before litigation
 - In the trial court
 - On appeal
- Alternative Dispute Resolution

Are there any alternatives?

- Questions?