

LAFCO Staff Implementation of Evolving LAFCO Statutes

I want to speak today to both LAFCO staff members and LAFCO Commissioners.

An essential and primary duty of the LAFCO staff is to ensure the Commission is in compliance with the law, especially as the law continues to evolve and change.

An equally important duty of the LAFCO staff is to implement the Commission's decisions and its views of the future local governmental structure in the County.

Therefore, to effectively serve the Commission - and the greater public - the LAFCO staff needs to be conversant with legislative changes and adjust processes to comply with new requirements.

Since the time of its creation, the purposes of LAFCO were to "discourage urban sprawl and encourage orderly governmental boundaries." Despite legislative enhancements over the years this continues to be its basic purposes.

It is understandable that LAFCO's views might differ from those of a local agency, given its countywide perspective and its legislative mandate. As a result of creating LAFCOs, the boundaries of local governmental agencies now become a "shared responsibility."

A look back may be of interest.

1963

LAFCOs came into existence in each California county in 1963. It was the first time such an agency had existed. Decisions that were previously two-party approvals – for example a city and a landowner – had overnight become three-party decisions: the city, a landowner and the newly formed LAFCO with its countywide perspective.

Its basic composition was two County supervisors, two city council members and one member of the public picked by the other members of the Commission.

In many counties the Commission was staffed by the County Administrative Office. In counties where LAFCO was staffed by the County planning staff; it took some while for land use planners to understand LAFCO.

Unlike many local government agencies LAFCO is a "quasi-legislative body." This means LAFCO does not need to make written findings of why it makes decisions. As long as there is any evidence in the record to support the LAFCO decision the court will generally not overturn or modify a LAFCO decision.

That original law listed a variety of “factors to be considered in the review of a proposal” and it is vital that the staff report discuss the relevant factors. The record of the LAFCO proceeding should illustrate the fact the Commission complied with the law.

Before LAFCO existed each county had a boundary review board to examine the map and legal description for boundary changes to insure they were technically adequate. Before too long that became the responsibility of LAFCO and its staff.

1965

In 1965 the legislature consolidated and unified boundary change procedures that govern special districts. We now had the District Reorganization Act (DRA).

Each LAFCO staff had to become conversant with these boundary change procedures so it could advise the Commission and work with local agencies and citizens.

1970

A statutory change granted individual LAFCOs authority over latent powers of special districts when requested by a majority of special districts in that county. If so, LAFCO was expanded by two members chosen from independent special districts.

Thereafter, in counties with special district members on the Commission, LAFCO staff had to be professionally accountable to city, county and now district members.

(Incidentally, existing law gives all LAFCOs authority over the exercise of latent powers regardless of whether special districts are seated on the Commission.)

1971

In 1971 the legislature acted again, in a big way. It said to LAFCOs, “While you’re doing a great job regulating local agency boundaries, why don’t you plan them first?”

So the statutory requirement to prepare Sphere of Influence was created –plans for the probable physical boundary and service area of each city and special district.

(For some years the law defined a Sphere as a “Plan for the probable, ultimate boundary” but the term “ultimate” became problematic so it was removed in the current language.)

Having to prepare or be responsible for Spheres is a major change for LAFCO and for its staff. Instead of only examining and regulating proposed boundary changes, LAFCO staff now had prepare and recommend a plan for the future boundaries of each agency and prepare statements of determinations with respect to such matters as:

- Present and planned land uses in the area
- Present and probable need for public facilities and services, including schools
- Present and probable needs for public facilities and adequacy of public services
- Existence of any social or economic communities of interest in the area if determined to be relevant

Situations exist in parts of the State where LAFCO-adopted Spheres for local agencies may differ or be more restrictive than the general plans adopted by the local agency for areas it may contemplate for annexation.

1975

I admit I am here today because of a California Supreme Court case. The Court decided in the 1975 Bozung case that LAFCO is subject to the California Environmental Quality Act and local government boundary changes are “projects” as that term used in CEQA.

In deciding the case Judge Otto Kaus wrote that “No farmer annexes his field to a city because his cows would be more content in an incorporated pasture.” He was saying LAFCOs need to look at the underlying purpose of an annexation and its projected effects. LAFCO needs to be conversant on environmental issues.

That case overturned the Ventura LAFCO-approved Bell Ranch Annexation to the City of Camarillo. After that lawsuit the Ventura LAFCO decided it needed a “full time” staff, which is when I applied for and was appointed as its Executive Officer.

1977

The legislature consolidated laws governing city boundary changes into the Municipal Organization Act, or MORGA. This did not greatly increase LAFCO duties, except that it included, for the first time, a special provision allowing annexation of unincorporated “islands” without a veto by those within the island.

1983

An appellate court decided the deadline for LAFCO to adopt Spheres has passed. The Legislature adopted a change to the LAFCO statute establishing 1985 as the deadline to adopt Spheres and requiring boundary decisions to be consistent with the Sphere.

1985

The Legislature – with the help of a committee of LAFCO staff – consolidated the 1963 Knox-Nesbitt Act, 1971 District Reorganization Act and 1977 Municipal Organization Act into the law we use today. It did not greatly change procedures.

1993

Mike Gotch had been Executive Officer of the San Diego LAFCO, after which he was elected to the San Diego City Council and then the State Assembly.

The 1993 Gotch Bill, made several changes; key among them is requiring LAFCO approval for cities or special districts to provide services outside their boundaries without an annexation. Another change granted LAFCO the authority to *initiate* certain types of boundary changes.

2000

In 2000 the Commission on Local Governance for the 21st Century issued its report, *Growth Within Bounds*. In preparing the report the Commission travelled around the State having public meetings. Many of us thought the report when it came out would be an indictment of LAFCOs. Instead it said LAFCO authority should be increased.

This led to adoption of the Cortese-Knox-Hertzberg Local Government Reorganization Act which made several statutory modifications. It made LAFCO for the first time the conducting authority for protest hearings, required LAFCO to periodically review and update Spheres and in so doing required LAFCO to conduct Municipal Service Reviews.

It also added new factors LAFCOs must consider in reviewing proposals, namely, adequacy of water supply and regional housing.

And we can go on.

2007, 2009, 2010 and 2012

In 2007 the Legislature adds Environmental Justice as another factor LAFCOs needs to consider when it reviews boundary changes applications. In 2009 LAFCOs are directed to consider regional transportation plans and sustainable community strategies. In 2010 LAFCOs are encouraged to annex disadvantaged communities. In 2012 a law becomes effective that requires LAFCOs to inventory Mutual Water Companies, the first time LAFCO is directed to study private as opposed to public agencies.

Legitimate Role of LAFCO Staff

Over the years LAFCO's mandate has grown and been modified by the Legislature and the Courts. The LAFCO staff, in its role to ensure the Commission is compliant with the law, needs to keep abreast of these changes and implement new procedures.

The LAFCO statute (56325.1) says that while serving on the Commission its members shall exercise independent judgment on behalf of the *interests of the public as a whole* and not solely the interests of the group that appointed them to LAFCO.

The LAFCO staff knows that is a difficult transition for some LAFCO Commissioners to make, yet it is something we try to achieve: Have LAFCO members put aside their "county hat," "city hat" or "special district hat" and think about items on the agenda by putting on for that meeting their "LAFCO hat." It is a legitimate staff duty to make members of the Commission aware of this statutory obligation.

When new members are appointed to LAFCO they may not have much knowledge or background about the Commission, why it was created and its duties. It is the legitimate role of the LAFCO staff to educate Commissioners about why LAFCO is here and what it is intended to accomplish.

In the final analysis, the LAFCO staff is responsible to analyze proposals and write reports and recommendations. But having fulfilled that process, what the Commission does is not the staff's decision.

The outcome is up to the members of the Commission. They take the staff report into consideration, but need to consider other factors as well, including the position of affected agencies, affected landowners and comments from the public, which may well differ from the LAFCO staff position.

Stay tuned. Who knows what the Legislature is going to do next year.