

LAFCo 101

An Introduction to Local Agency Formation Commissions



LAFCo 101

Understanding & Applying the Basics

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LAFCo 101 Presenters

- ❖ SR Jones, Executive Officer, Nevada LAFCo
- ❖ Michael Colantuono, Colantuono, Highsmith, Whatley, PC
- ❖ David West, Public Member Commissioner, Imperial LAFCo

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What's Ahead

- ❖ Why LAFCo was Created
- ❖ LAFCo's Legislative Mission, Scope and Composition
- ❖ LAFCo's Planning and Regulatory Functions
- ❖ LAFCo's Legal Foundation
- ❖ Commission Roles and Challenges
- ❖ Q & A

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Why LAFCo was Created

- ❖ Post World War II population and housing boom in California
- ❖ From street cars to suburbs — a scramble to finance and extend services
- ❖ City annexation “wars” and proliferation of special districts
- ❖ Governor Pat Brown’s Commission on Metropolitan Problems focused on need to encourage orderly boundaries

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Legislative Compromise

- ❖ No Statewide Commission
- ❖ A LAFCo in each county
- ❖ Local control; no State appointees
- ❖ Decisions based on local circumstances
- ❖ LAFCOs are independent; no administrative appeal

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LAFCo in Every County



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LAFCo's Purposes

- ❖ Encourage orderly boundaries
- ❖ Discourage urban sprawl
- ❖ Preserve agriculture and open space
- ❖ Promote efficient public services
- ❖ Consider regional housing needs, adequate water and other issues



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Legislative History

- ❖ 1963 - Knox-Nisbet Act – LAFCos created to regulate boundaries
- ❖ 1965 - District Reorganization Act to unify district procedures
- ❖ 1971 - Spheres of Influence – LAFCos plan, too
- ❖ 1972 - Allow special district members



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Legislative History (cont'd)

- ❖ 1977 - Municipal Organization Act – Clean up city procedures
- ❖ 1983 - Deadline to adopt Spheres of Influence
- ❖ 1985 - Cortese-Knox-Local Government Reorganization Act — Recodified
- ❖ 1993 - AB 1335 (Gotch) – Improved procedures, extraterritorial review

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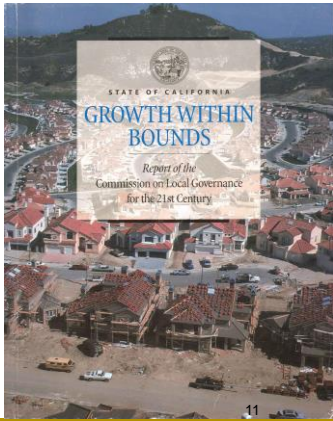


Recommendations (2000):

- ❖ LAFCos to be neutral, independent, and provide balanced representation.
- ❖ Strengthen LAFCo's powers to prevent urban sprawl and ensure orderly extensions of governmental services.
- ❖ Municipal Service Reviews to inform SOI updates.
- ❖ Strengthen policies to protect agricultural and open space.

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Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000

Major Reforms:

- ❖ Broaden LAFCo funding formula
- ❖ Make LAFCo the conducting authority
- ❖ Require Municipal Service Reviews and periodic Sphere of Influence updates
- ❖ Add new factors – water supply, regional housing

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LAFCo Composition

At the least:

- ❖ 2 County Supervisors
- ❖ 2 City Council members
- ❖ 1 Public member
- ❖ Alternate for each category
- ❖ 30 LAFCos also include 2 Special District members plus an alternate
- ❖ Some LAFCos have “special seats”

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Commissions a Unique Mix



30 LAFCos
with Special
District
Members

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- ❖ David West, Public Member
Commissioner, Imperial LAFCo

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LAFCos are Independent

- ❖ Commissioners make final decisions
- ❖ Adopt local policies
- ❖ Decisions cannot be appealed to other administrative bodies
- ❖ LAFCo staff accountable to Commission and statutes



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Commissioners are Independent, too

- ❖ Exercise independent judgment on behalf of public, not appointing agency
- ❖ Based on CKH and local LAFCo policies — not interests of appointing agency alone
- ❖ “LAFCo Hat” involves a broader perspective representing “public as a whole”

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Commissioners' Role

- ❖ What decisions will you make?
- ❖ What are your responsibilities?
- ❖ Active agenda vs. reactive caseload
- ❖ Make decisions supported by statute, local policies, and sound and comprehensive analysis

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Commissioner/Staff Engagement

- ❖ Seek out staff for information or questions before meetings
- ❖ Use related professional background and experience to assist staff
- ❖ Make yourself available to staff – communication is a two-way street

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Local Agencies Regulated by LAFCo

- ❖ Include:
 - ◆ Counties, cities, most special districts
- ❖ Do NOT include:
 - ◆ JPAs
 - ◆ Community facilities or Mello-Roos districts
 - ◆ School or college districts
 - ◆ County boundaries
 - ◆ Bridge and highway districts
 - ◆ Improvement districts
 - ◆ Zones of benefit
 - ◆ Air pollution/quality districts

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What Can LAFCo Do?

- ❖ City Incorporations (and Disincorporations)
- ❖ District Formations (and Dissolutions)
- ❖ Annexations
- ❖ Detachments
- ❖ Consolidations and Mergers
- ❖ Service Extensions outside a District or City
- ❖ Spheres of Influence
- ❖ Municipal Service Reviews
- ❖ Activate Latent Powers
- ❖ Review Fire Contracts

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LAFCo's Planning Functions

- ❖ Develop and update Spheres of Influence for cities and districts
- ❖ Prepare Municipal Service Reviews for all local jurisdictions
- ❖ Work cooperatively on growth, preservation and service delivery issues

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LAFCo's Regulatory Functions

- ❖ Administer modifications of existing agencies and creation of new ones
- ❖ Consider boundary changes
- ❖ Control extension of public services
- ❖ Prohibited from "directly" regulating land use

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When Does LAFCo Get Involved?

- ❖ LAFCos vary in approach (proactive vs. reactive)
- ❖ Opportunities:
 - ◆ Planning level (e.g., General Plan)
 - ◆ LAFCo application
 - ◆ Project level (e.g., CEQA)
 - ◆ Community issues

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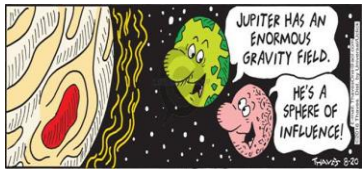
Statutory Requirements

- ❖ Municipal Service Review
- ❖ Sphere of Influence
- ❖ Boundary change decisions must be consistent with the spheres of influence of affected agencies

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LAFCos' Legal Role

- ❖ LAFCo is the Legislature's "watchdog" over local governments – its job is to regulate local government actions
- ❖ While powers are broad, LAFCo jurisdiction is limited to actions and powers granted by statute
- ❖ Must consider land use issues but cannot directly regulate land use

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Subject to State Laws

- ❖ Cortese-Knox-Hertzberg Act
- ❖ Brown Act / Public Records Act
- ❖ CEQA
- ❖ Revenue & Tax Code
- ❖ Political Reform Act / Other Conflict of Interest Laws
- ❖ Principal Acts

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Limited Legal Challenge

- ❖ LAFCo decisions are quasi-legislative
- ❖ Not appealable except to the courts
- ❖ Short time to file suit
- ❖ Limited legal challenge to decisions
- ❖ Upheld as long as decision is not "arbitrary and capricious"

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LAFCos' Key Legal Concerns

- ❖ Must act in accordance with state law and locally adopted policies
- ❖ Comply w/ CEQA as lead or responsible agency
- ❖ Must adopt findings to support decision (*McBail*)

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Environmental Review of LAFCo Decisions

- ❖ Many LAFCo actions are “projects” under CEQA
- ❖ Pre-zoning makes city lead agency
- ❖ LAFCo is often responsible agency
- ❖ Categorical exemptions tailored to LAFCo actions — Classes 19 (annexations of existing facilities) & 20 (changes of organization)

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LAFCo Process

- ❖ Pre-Application Steps
 - ◆ Meet with LAFCo staff
 - ◆ City-County consultation (for Sphere amendments and annexations)
 - ◆ Prepare an application package
 - ◆ Initiating petition or resolution

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LAFCo Process (cont'd)

❖ Public Hearing Steps

- ◆ LAFCo receives application package
- ◆ Referrals to affected agencies for comment and tax exchange
- ◆ Review for completeness
- ◆ Consistency analysis
- ◆ Staff report with recommendations
- ◆ Conduct public hearing

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LAFCo Process (cont'd)

❖ Post-Hearing Steps

If Commission approves application, then:

- ◆ Reconsideration period
- ◆ Conduct Protest hearing, if required
- ◆ Satisfy any conditions of approval
- ◆ File documents with County Recorder and State Board of Equalization, if required

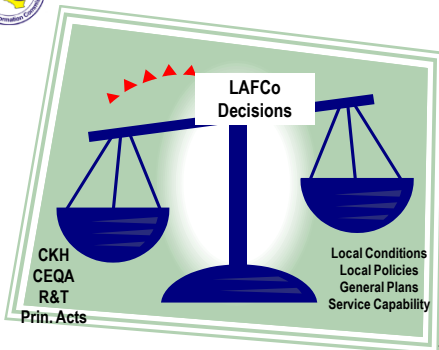
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LAFCo Balancing Act



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LAFCo Misperceptions

- ❖ LAFCo has a “magic wand” that instantly solves boundary and service issues.
- ❖ LAFCo proceedings do not require deliberate review and analysis that require agency and public collaboration and/or support.
- ❖ LAFCo is an arm of the county, not the state.
- ❖ LAFCo’s sole mission is to dissolve agencies, particularly special districts.
- ❖ LAFCo’s role is always “reactive” and not “proactive.”

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Litigation

- ❖ Any decision can be litigated, 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

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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

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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 Political Reform Act or Brown Act

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Avoiding 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 ("we find x because y")
 - ◆ Allowing a fair hearing, avoiding bias and conflicts of interest

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LAFCos are Independent

- ❖ Legislature requires the Commissioners to exercise their independent judgment in carrying out the provisions of the Act and to make their decisions impartially, on behalf of the public as a whole.
- ❖ LAFCo decisions involve balancing potentially competing interests of cities, counties, and special districts.
- ❖ While Commissioners' decisions may be informed by their experience at their agency, those decisions must not be dictated by the interests of that agency.

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Each Commission is Independent

- ❖ Provides own office, equipment, personnel
- ❖ Appoints an Executive Officer
- ❖ Appoints a Legal Counsel
- ❖ Can contract for staff services

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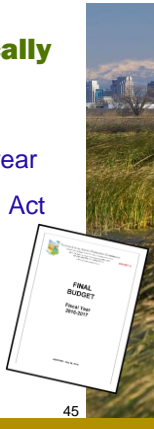


LAFCo is Funded Locally

- ❖ Must adopt a work program and budget by June 15 for next fiscal year
- ❖ Budget process is outlined in CKH Act
- ❖ Funded by the county, cities, and special districts (usually in equal shares)
- ❖ County Auditor processes the invoices

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LAFCo is Funded Locally (cont'd)

- ❖ Local funding formulas are allowed
- ❖ Processing fees help to offset expenses for proposals
- ❖ Adoption of fee schedule recommended

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LAFCo Staff Serve the Public and Commission

- ❖ Provide accurate and comprehensive information
- ❖ Analyze and interpret CKH and other laws (CEQA, general plans, etc.)
- ❖ Process proposals consistently w/ CKH and local procedures and policies
- ❖ Prepare notices, staff reports, studies and recommendations
- ❖ Implement Commission decisions

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Current Challenges

- ❖ Sphere of Influence updates and Municipal Service Reviews (56425(g))
- ❖ Disadvantaged Unincorporated Communities (56375(a)(8))
- ❖ Viability of smaller local agencies
- ❖ Water, water, water (SGMA implementation, etc.)

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CALAFCo

- ❖ Professional education (annual conference, staff workshop, CALAFCo University)
- ❖ Technical resources (research reports/white papers, contact directory, library, list serves, *The Sphere*, etc.)
- ❖ Statewide coordination
- ❖ Resource to Legislature and other organizations

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Current Legislative Issues

- ❖ **2017**
- ❖ **AB 1361** Tribes can to enter into service agreements with service providers w/o LAFCo approval.
- ❖ **SB 448** Controller creates a list of special districts that are inactive. Requires LAFCo to initiate proceedings for the dissolution of an inactive district.
- ❖ **AB 979** Streamlines the seating of special districts on LAFCo by allowing the question of representation to automatically be placed on the written ballot.
- ❖ **Little Hoover Commission Recommendations-A** review of the recommendations what LAFCos can do to proactively implement this advice.

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Current Legislative Issues

- ❖ **2016**
- ❖ **SB 272.** Create a catalog of enterprise systems, as defined, to make the catalog publicly available upon request in the office of the person or officer designated by the agency's legislative body, and to post the catalog on the local agency's Internet Web site.
- ❖ **SB 1266.** Agency or entity required to file documents with the Controller and LAFCo that meets the definition of a joint powers authority formed for the purpose of providing municipal services.
- ❖ **AB 2257.** Requires an online posting of an agenda for a meeting occurring on and after January 1, 2019, of a legislative body of a city, county, city and county, special district, school district, or political subdivision.

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Promote orderly growth
Prevent sprawl
Preserve agriculture and open space
Assure efficient, sustainable public services

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Panel Discussion Questions and Answers

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Information and resources on
LAFCo law and process

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