



**LAFCO MISSION:**  
 Promote orderly growth  
 Discourage sprawl  
 Preserve agriculture and open space  
 Assure efficient, sustainable public services

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# LAFCo 101

## Understanding & Applying the Basics

Susan Wilson, Public Member Commissioner, Santa Clara LAFCo  
 George Spiliotis, Executive Officer, Riverside LAFCo  
 Kara Ueda, Best, Best and Krieger  
 David Church, Executive Officer, San Luis Obispo LAFCo

October 3, 2018

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## LAFCo 101 Presenters

- ❖ David Church, Executive Officer, San Luis Obispo LAFCo

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## LAFCo 101 Presenters

- ❖ Susan Vicklund-Wilson, Public Member Commissioner, Santa Clara LAFCo
- ❖ George Spiliotis, Executive Officer, Riverside LAFCo
- ❖ Kara Ueda, LAFCo Counsel, Best, Best and Krieger

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## What's Ahead

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

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## Why LAFCo was Created

- ❖ Post World War II population and housing boom in California
- ❖ From street cars to freeways and 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-needed a local solution
- ❖ LAFCo in each county
- ❖ Local control; no State appointees
- ❖ Decisions based on state law and local circumstances

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### Legislative History

- ❖ **List of the legislation that shaped LAFCO**
  - ❖ 1963 - Knox-Nisbet Act – LAFCOs created to regulate boundaries
  - ❖ 1965 - District Reorganization Act to unify district procedures
  - ❖ 1971 - Spheres of Influence – LAFCOs do long range planning, too
  - ❖ 1972 - Allow special district members

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## Legislative History (cont'd)

### ❖ List of the legislation that shaped LAFCO

- ❖ 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 (outside user agreements) review
- ❖ 2000-LAFCO Authority to initiate some actions

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## LAFCo 101 Presenters

- ❖ George Spilitios, Executive Officer, Riverside LAFCo

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## LAFCo's Purpose: Legislative

- ❖ State Policy 56001-promote orderly development
- ❖ LAFCO's Role: Balance development with other "competing state interests"
- ❖ This is the LAFCO balancing Act

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### LAFCo's Purpose: Legislative

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



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### LAFCo Composition

Basic composition:

- ❖ 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"
- ❖ Counties with no cities



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### Commissions a Unique Mix



30 LAFCos with Special District Members



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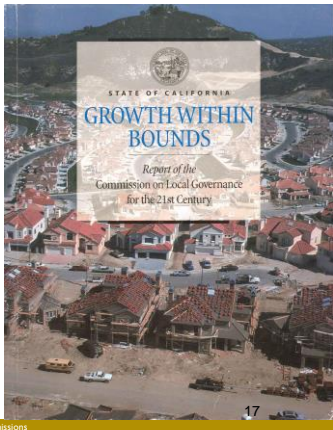
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**Recommendations (2000):**

- ❖ 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 Changes:**

- ❖ 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's Planning Functions**

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




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### LAFCo's Regulatory Functions

- ❖ Administer **changes** of existing agencies (organizations) and creation of new ones
- ❖ Evaluate **boundary changes** based on various factors
- ❖ **Terms and Conditions:** Broad authority (GC 56885)
- ❖ Monitor/Control **extension** of public services
- ❖ Prohibited from "directly" regulating land use

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### What decisions do you make?

- ❖ 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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### 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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### 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 budget by June 15
- ❖ Many LAFCOs approve a work plan too
- ❖ Budget process is outlined in CKH Act
- ❖ Minimum funding level is defined
- ❖ Net cost funded by the county, cities, and special districts (*usually in equal shares*)
- ❖ County Auditor calculates charges and 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 101 - (cont'd)

❖ George's best advice/story...



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### LAFCo 101

❖ Susan Vicklund-Wilson, Public Member Commissioner, Santa Clara LAFCo



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### Commissioners' Role

- ❖ What decisions will you make?
- ❖ What are your responsibilities?
- ❖ Make decisions supported by statute, local policies, and sound and comprehensive analysis
- ❖ Broad discretion in light of the record



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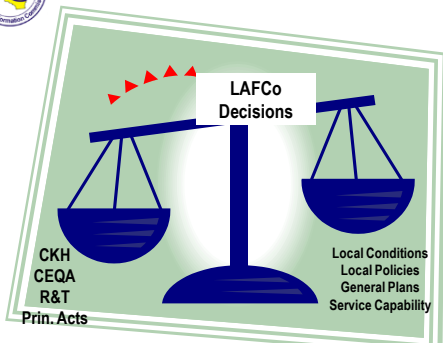
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### LAFCo Balancing Act



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### Commissioners

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



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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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### 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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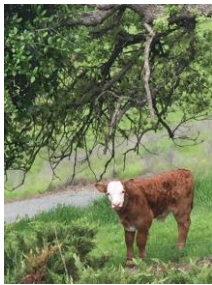
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### Commissioner/Staff Engagement

- ❖ Susan's best advice/story...



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### LAFCo 101

- ❖ Kara Ueda, Partner, Best, Best & Krieger



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## LAFCos' Legal Role

- ❖ While powers are broad, LAFCo jurisdiction is limited to actions and powers granted by statute
- ❖ Legislature has given LAFCos authority over boundary decisions and other government organization issues
- ❖ LAFCo is the Legislature's "watchdog" over local governments – one job is to monitor local government actions

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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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## 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 determinations to support decision (*McBail*)

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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”
- ❖ Terms and Conditions



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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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## Avoiding Litigation

### ❖ Thus, preventing litigation can be summarized as

- ◆ Avoid procedural error
- ◆ Ensure there is substantial evidence to support every required finding
- ◆ Notice problems
- ◆ 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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## Avoiding Litigation

- ❖ Kara's best advice...
- ❖ Kara's best story....

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## Fake Scenarios

- ❖ Break into small groups with the people around you-Appoint a facilitator & note taker
- ❖ You have 5-6 minutes for each scenario
  - ◆ Scenario 1- Preserve More Ag Land?
  - ◆ Scenario 2 - To dissolve or not to dissolve?
  - ◆ Scenario 3 – Water supply good enough?
- ❖ Report out decisions and differences

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## Questions and Answers

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