

LAFCO Policies – What are they all about?

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CKH Provisions re Policies

CKH mandates that LAFCOs adopt and implement policies. GC 56300(a)

Not much specificity about their contents: "efficient urban development patterns," preservation of "open space and agricultural lands." GC 56300(a)



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CKH Provisions re Policies

- A number of CKH provisions identify particular topics on which policies are required or invited.



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Required Policies

- Disclosure of contributions to influence LAFCO. (GC 56300(b), 56100.1)
- Disclosure of lobbying expenditures. (GC 56300(c))
- Policies "shall include forms ... including at a minimum for any protests to be filed with the commission" (GC 56300(e))
- Policy re website to include notices of hearings and meetings (the Brown Act mandates this, too) (GC 56300(f)(1))

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More Required Policies

Policies must include those "designed to promote the logical and orderly development of spheres of influence" (GC 56425(a))

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Optional Policies

- Definition of "inhabited territory" used to define a DUC (GC 56033.5)
- Napa / San Bernardino pilot program for extra-territorial service calls for local policies (GC 56133.5)
- Urban service area boundaries adopted in consultation w/ affected City must be stated by a policy (GC 56080)
- Out-of-boundary service contracts (GC 5613(c))
- Scope of MSRs (GC 56430(a)(7))
- Santa Clara Policy re road annexation binds its cities (GC 56757)

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More optional policies

- Definition of size of annexations which trigger duty to annex contiguous DUCs (statutory default is 10 acres, LAFCO can change that) (GC 56375(a)(8)(A))



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Effect of policies

- They bind applicants (E.g., GC 56757)
- They bind LAFCO (GC 56375(a)(1))
- LAFCO must consider them when considering applications (GC 56668(d))



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Pros and Cons of Policies

- Pros: Policies allow you to frame the considerations to guide analysis of future decisions and can be adopted without the political pressure of a particular application
- Cons: They constrain decision-making, which can be a good thing (preventing unprincipled decisions) or a bad thing (making it hard to address new considerations and issues not considered when the policy was drafted)
- As Pogo famously said: "We have met the enemy and he is us."



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Three Examples of Detailed Policies

San Diego
Stanislaus
Tulare



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San Diego's Policies

- Administrative Policies: SanDAG Regional Growth Management Strategy, Cities Ad Hoc Committee, Internet Resources, CPRA Requests, Records Retention
- Fiscal Policies: Fiscal operations, fund balance (i.e., reserves)
- Legislative Policies: City annexation of territory in special districts, preserving open space, SOIs, Recognition of Unincorporated Communities, MSR Strategy, Water Supply, Fire Protection K's, DUCs, Conduct of Protest Hearings



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Tulare's Policies - Examples

- Municipal Service Reviews
- Disadvantaged Unincorporated Communities
- County Islands
- Extraterritorial Service Agreements



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Municipal Service Reviews (MSRs)

GC 56430 – In order to prepare and to update spheres of influence in accordance with section 56425, the commission shall conduct a service review of the municipal services provided in the county...

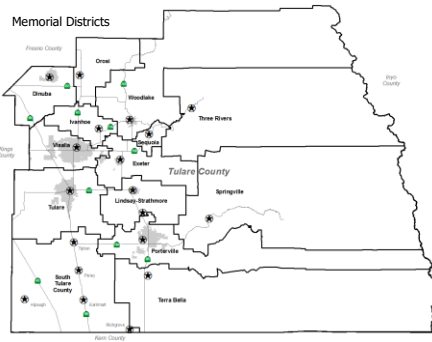
- Need
- Timing – SOI Update vs Amendment
- What is a municipal service?

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Disadvantaged Unincorporated Communities (DUCs)

Default definition – Ties "Inhabited" (12 or more registered voters) with Water Code definition of DUC: a community with an annual median household income that is less than 80 percent of the statewide annual median household income.

TC LAFCO definition – Water Code definition tied to a geographical context (at least 20 dwelling units at a density not less than one unit per acre)

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Unincorporated County Islands

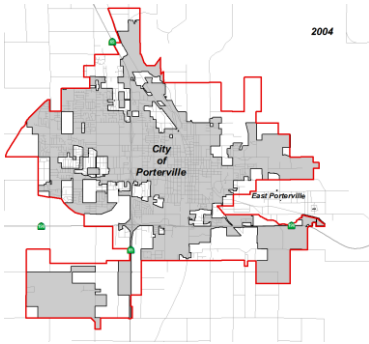
- What is substantially surrounded?
- Policies to promote annexation and discourage creation of County Islands
- Special tax sharing agreements

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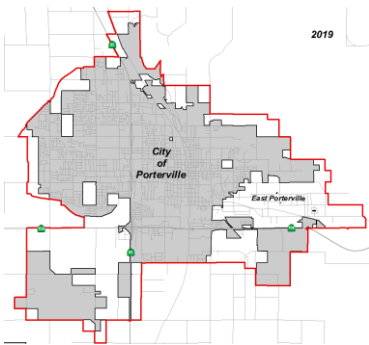




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Extraterritorial Service Agreements

GC 56133(d) allows for delegated authority to EOs for review of ESAs

Tulare County LAFCO policy makes use of delegated authority for ESAs pertaining to developed land. ESAs affecting undeveloped land go the Commission for action.

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Stanislaus' Policies

- Background
- Statutes Governing LAFCO
- Commission Rules
- General Powers & Guidelines
- SOIs
- Special Districts
- Glossary
- Appendices
- Flowcharts

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More Stanislaus Policies

- General Powers & Guidelines include:
- Priorities for annexations and formations
 - Concurrent City-District annexation
 - Sufficiency of Petition Signatures
 - Legal Defense Fee Responsibility
 - Incorporations
 - Out-of-Boundary Services K's (Fire, too)
 - Island Annexations
 - Streets & Canals

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Ex Parte Contacts – a New Issue

- New Rules of Professional Conduct define local governments as “Tribunals” when they exercise quasi-judicial power, as LAFCO does under CEQA (RPC 1.0.1(m))
- This triggers – for lawyers only – duties of candor (RPC 3.3), a ban on gifts to LAFCO Commissioners or staff (RPC 3.5), and on ex parte communications (RPC 3.5)



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This creates an unlevel playing field

- Lawyers cannot do what others can and these rules can be “weaponized” to attack participants in a political debate who happen to be lawyers, even if they participate as private citizens – about a proposal to annex the neighborhood they live in, for example
- LAFCO can’t fix the candor issue (and likely wouldn’t want to)
- It can adopt policies to regulate gifts and ex parte contacts to restore a level playing field



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Policy options

- Gifts: forbid, allow, regulate
 - Probably best to simply cross-reference the Political Reform Act to keep it simple and avoid rules people don’t know about
- Ex parte contacts:
 - Bar them
 - Allow them if reported publicly
 - Allow them if reported publicly if a Commissioner intends to rely on them in decision-making
 - The first is the APA rule, the second is used in some big cities, the third is required by due process



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Questions?



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