



Deep Dive into Municipal Service Reviews: Once size does not fit all

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Agenda

- Municipal service review history
- Statutory requirements
- Scope of LAFCO's discretion
- MSR determinations
- Legal vulnerabilities

MSR History and Legislative Intent

MSR History

- 1971: Legislature first requires LAFCOs to adopt spheres of influence
 - LAFCOs were criticized for making boundary decisions without the guidance of long-range goals
 - No deadline for completing SOIs
- 1984: Legislature requires LAFCOs to establish SOIs within a year
- 1985–1999: Only 30 LAFCOs performed comprehensive SOI updates

Commission on Local Governance in the 21st Century

- Formed in response to LA secession proposals — San Fernando Valley, Hollywood, San Pedro / Harbor areas
- LAFCOs had not succeeded in their mission of taming sprawl
- To be more effective, LAFCOs needed more power
- Led to comprehensive rewrite of what is now the Cortese-Knox-Hertzberg Act

What Was the Commission Thinking?

“Meaningful spheres will not be possible unless they are regularly updated based upon comprehensive studies and they incorporate actual and projected information on trends in growth and development, service capacities, and public preferences.”

- Growth Within Bounds (2000) at p. 97

What Did the Commission Want MSRs To Do?

- Provide a mechanism for LAFCOs to obtain comprehensive knowledge of the services available in a county
- Encourage LAFCOs to gather the necessary information to inform sphere decisions
- Assist LAFCOs in learning about the current efficiency of providing services, the future need for service, and the expansion of capacity

How Did the Commission Want LAFCOs to Perform MSR's?

- "LAFCOs should be provided flexibility in designating the geographic area to be analyzed, the timing of conducting particular reviews, and the scope of the reviews."
- Performed in conjunction with SOI update/establishment
- Services studied would include water, sewer, garbage and "other services the LAFCO judges to important to future growth"
- LAFCOs have a "unique role ... as the State's only true regional growth agent"
 - Growth Within Bounds (2000) at pp. 99, 101.

MSR Statutory Requirements

Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000

- In order to prepare and to update SOIs, LAFCOs “shall” conduct MSR
- Area for service review:
 - the county,
 - the region,
 - the subregion, or
 - any other geographic area as is appropriate for an analysis of the service or services to be reviewed
- Prepare written determinations
 - Stats. 2000, ch. 761, § 81 (A.B. 2838), codified in Gov. Code § 56430, subd. (a)

MSR Determinations *circa* 2000

1. Infrastructure needs or deficiencies.
2. Growth and population projections for the affected area.
3. Financing constraints and opportunities.
4. Cost avoidance opportunities.
5. Opportunities for rate restructuring.
6. Opportunities for shared facilities.
7. Government structure options, including advantages and disadvantages of consolidation or reorganization of service providers.
8. Evaluation of management efficiencies.
9. Local accountability and governance.
 - Stats. 2000, ch. 761, § 81 (A.B. 2838), codified in Gov. Code § 56430, subd. (a)

MSR Determinations Now

1. Growth and population projections for the affected area.
2. The location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence.
3. Present and planned capacity of public facilities, adequacy of public services, and infrastructure needs or deficiencies including needs or deficiencies related to sewers, municipal and industrial water, and structural fire protection in any disadvantaged, unincorporated communities within or contiguous to the sphere of influence.
4. Financial ability of agencies to provide services.
5. Status of, and opportunities for, shared facilities.
6. Accountability for community service needs, including governmental structure and operational efficiencies.
7. Any other matter related to effective or efficient service delivery, as required by commission policy.
 - Gov. Code, § 56430, subd. (a)

Government Code § 56430

continued ...

- Shall assess all agencies that provide the service w/in geographic area
- May assess alternatives for improved efficiency/affordability/service delivery, including consolidation
- May review compliance with safe drinking water standards
- May request information from public and private entities that provide wholesale or retail drinking water, including mutuals
- Shall conduct MSR before, or in conjunction with, SOI update

Scope of LAFCO's Discretion

LAFCO's Broad Discretion

- "LAFCO is an agency with large discretionary powers."
 - *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 288
- LAFCO decisions are valid under CKH unless there is fraud or prejudicial abuse of discretion
- Prejudicial abuse of discretion occurs when LAFCO:
 - Makes a determination not supported by substantial evidence in light of the whole record, or
 - Commits legal error

LAFCO's Broad Discretion

- Substantial evidence:
 - Meaningful evidence before LAFCO to support each finding
 - Relevant evidence that a reasonable mind might accept as adequate to support a conclusion
 - It doesn't matter that two or more inferences can reasonably be deduced from the facts—courts don't substitute their judgment for agency's
 - Includes public comment!
- Challenger must show no substantial evidence—difficult burden

LAFCO's Broad Discretion

- Guided by CKH's overriding legislative intent
 - E.g., encourage orderly growth, discouraging urban sprawl, etc.
 - "The mere fact that a particular LAFCO decision, legally arrived at, permits or results in further urban sprawl, does not give the courts the right to assume the obligations which the Legislature has entrusted to LAFCO." *Bozung*, 13 Cal.3d at 288
- Limited to powers the Legislature provided in CKH
 - No direct regulation of land use
 - Consistency between changes of organization and SOIs

LAFCO's Broad Discretion

- Commissioners exercise independent judgment
- LAFCO's policies and procedures may include additional determination topics
- In sum, because CKH requires LAFCO to prepare MSRs, it has broad discretion to adopt determinations that are supported by substantial evidence

MSR Determinations

MSR Determinations

- Determinations are advisory — cannot bind the agency
- How far to take determinations is a political decision for LAFCO
- MSRs normally come into play in other legal challenges, e.g., annexations, dissolutions, CEQA, etc.
 - LA LAFCO's determination that Santa Clarita could not accommodate additional growth cited to support court's decision that city violated CEQA by approving SOI amendment with negative declaration

MSR Determinations

- Determinations = findings?
- Determinations: quasi-legislative action
- Finding: adjudicative decision

MSR Determinations

- Findings:
 - Legally-relevant sub-conclusions that expose the agency's mode of analyzing facts, regulations, and policies
 - Bridge the analytical gap between raw data and the agency's ultimate decision
 - Footprints LAFCO leaves to explain how it applied the facts to established standards to reach a decision
 - *Topanga Ass'n for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506

MSR Determinations

- LAFCO finding upheld by court:

The future availability, reliability, and sustainability of the City's water supply, including the Tri-Cities Groundwater Basin, Lopez Reservoir, and State Water Project (SWP) is uncertain due to identified stresses and potential risks regarding the water supply. These potentially constrain sources would significantly reduce the city's available water supply and limit the city's ability to provide services to existing as well as new residence. The stresses and risks include:

- A drought situation, saltwater intrusion, or other water supply disruptions that would adversely affect the city's ability to provide water service in both the short and long-term;
- State Water availability in the long term will be uncertain due to various factors, including climate change, drought frequency and intensity in the overall health of the Delta;
- The continued availability of the Tri-Cities Mesa Groundwater Basin will depend on the active management of this resource by the jurisdictions and the levels of precipitation/recharge within the Basin;
- The City does not yet have the capability to provide recycled water that could be used in the future to recharge the Tri-Cities Groundwater Basin.
- Other stresses and risks documented in the record.

MSR Determinations

- Although framing determinations is political, LAFCO's are independent and its discretion is broad
- Connect determinations to facts in the record by using "because"
- Consider how determinations will be used to justify decisions about SOIs, agency boundaries, and potential conditions of approval in the future

Legal Vulnerabilities

Legal Vulnerabilities

- Consider whether CEQA applies
- Is the MSR to be considered in conjunction with a SOI or change of organization that constitutes a project?
- Is the project exempt?
 - Feasibility or planning study
 - Class 6 information collection
 - Class 20 changes in organization
 - Common sense exemption

Legal Vulnerabilities

- MSR's are unlikely to be challenged directly
- MSR's may provide the substantial evidence for subsequent challenges to annexations, dissolutions, and other changes of organization

Summary

- The goal was noble
- MSRs are a useful tool
- How to use that tool is up to you

Thank you!

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