LAFCO and the LAW
Avoiding Pitfalls and Potholes

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Legal Framework
- The Federal and California Constitutions
- Cortese-Knox Hertzberg Act (CKH)
- California Environmental Quality Act (CEQA)
- Brown Act
- Public Records Act
- Conflict of Interest Statutes
- Myriad of Other Laws

The Constitutional Framework
- No federal constitutional right to be in or out of a local agency (Hunter v. Pittsburgh (1907) 207 U.S. 161)
- No State Constitutional Right (Weber v. City Council (1973) 9 Cal.3d 950)
- Reorganization Laws Upheld as long as there is a rational basis
LAFCo action viewed as “quasi-legislative”
Due process right to notice, opportunity to be heard and fair hearing seldom applied to quasi-legislative actions
Primary Risk is Equal Protection Discriminatory Action Claim Against Protected Group (Comm Concerning Community Improv. v Modesto (2009) 583 F.3d 690)
Special Voting Requirements in Some Counties

CKH establishes the fundamental framework of how LAFCo’s function
Evolved out of a patchwork of statutes governing agency reorganization
Provides a complex procedure for a local regional body to decide on local government reorganization, balancing state policies and local and citizen interests

Some protection Built into CKH
§56106 (Time requirements directory not mandatory)
§56107 (liberal construction, actual prejudice must be shown)
Failure to Comply with Statute
– Failure to timely adopt Sphere Updates—§56425(g)
– Failure to make adequate findings – McBail Case
– Failure to follow requirements for service plan—Patterson Case
But Courts give LAFCo considerable room to interpret law
Failure to Follow Commission Policies—§56375(a)(1)
LAFCo Must Comply with CEQA in making its decisions

As A Responsible Agency, Role is Limited
- Is Supplemental EIR Required?
- Must Adopt Feasible Mitigation Measures

Acts as Lead Agency on Sphere Decisions
- Baseline is current physical conditions on the ground, not existing sphere
- Must evaluate Indirect Facilitation of Growth

CEQA challenge is the greatest legal risk a LAFCo will face

As A Responsible Agency, Risk is Limited
- Can be sued even where lead agency is also being sued
- Failure to require a supplemental EIR
- Failure to adopt feasible mitigation measures

Lead Agency Risk is High
- Adoption of Negative Declaration or Exemption is easily challenged
- Failure to follow Complex CEQA Statute and Guidelines

Regulatory and huge body of CEQA law

CEQA lawsuits are complex, costly to defend and take years to resolve
- If Challenger prevails, entitled to attorney’s fees
Brown Act | Risk Factors

- No Collective Decision-Making Outside Meeting By Majority—Govt Code § 54952.2
  - What is a majority required for action?
  - Includes Email and phone communications
- Agenda Requirements—§54954-§ 54957.7
  - Timing
  - Adequacy of Item Description
  - Closed Session Limitations
- Challenger Must Give Agency Opportunity to Remedy Violation—Right to Fees if wins

Public Records Act | Risk Factors

- LAFCo must supply public records if asked—Govt Code §§6250 et.seq.
- Broad definition of what constitutes “public record”
  - Exemptions for deliberative process and attorney-client communications
- Procedural Requirements—
  - Timing to respond
  - Limited to copying costs
- Law favors the Right of the Public to documents and successful claimant entitled to legal fees

Conflict of Interest Statutes

- Political Reform Act—GC 81000 et.seq.
  - Statements of Economic Interest must be filed
  - Conflict exists if reasonably foreseeable that decision will have a material effect on economic interest
  - 300 Feet of Annexation
  - Special Limits for campaign donations for commissioner—$250 in last 12 months
  - Action of the Commission can be voided if a conflict
Conflict of Interest Statutes—pg 2

- G.C. 1090 Contracts with Commissioners
  - Absolute prohibition—contract void
  - Criminal penalties for violation
- Incompatible Offices
  - Cannot serve as a “public official” simultaneously in two positions where one body has regulatory authority that affects the other
  - Dual role as LAFCo commissioner and agency directors is statutorily authorized
- Common Law Conflict Prohibitions

Other Statutes

- The unique role of LAFCo regulating a broad range of agencies requires it to consider issues that are governed by an equally broad range of statutes and regulations
  - Water Law and Water Quality Regulation
  - Prop 218 and Municipal finance
  - CSD Law and other principal acts
  - Other laws