Reading CKH Like a Lawyer

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Island Annexations

- GC 56375.3(a): LAFCO must approve annexations of islands
- GC 56375.3(b):
  - 150 acres or less
  - 1 or more whole islands
  - Surrounded by City, County border, Pacific Ocean
  - Substantially developed or developing

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Island Annexations (cont.)

- Substantially developed or developing means:
  - Available public services
  - Presence of public improvements
  - Physical improvements of land
- Not prime ag. land
- Territory will benefit from annexation
- GC 56375.4: Doesn’t apply to island created after 1/1/14

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Island Annexations (Cont.)

- What is the whole island?
- What is an island?
  - Objective criteria (% of border)
  - Subjective criteria
    • Communities of interest
    • Land use “edges”
    • Environmental impact

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Taxes Following Annexation

- **CKH tax provisions**
  - R&T 99
  - GC 56886 terms & conditions:
    - (b) fund property acquisition
    - (c) assign bonds, contracts and other obligations
    - (e) establish improvement districts
    - (f) authorize or require issuance of new debt
    - (g) new bond issuance
    - (h) new assessments, fees and taxes
    - (i) continued charges, fees, assessments and taxes
    - (u) transfer of authority over special tax and assessment districts
    - (v) any others necessary or incident to specified terms and conditions

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Taxes Following Annexation (Cont.)

- **Approval of new taxes, assessments, and property related fees**
  - Taxes require 50% (general) or 2/3 (special) voter approval under Props. 13, 62, and 218
  - Assessments require 50% property owner approval under Prop. 218
  - Property related fees require majority protest proceeding and – but for water, sewer and trash fees – 50% property owner or ⅔ voter approval under Prop. 218
  - Most fees limited to cost of service by Prop. 26

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Taxes Following Annexation (Cont.)

- **Citizens Ass’n of Sunset Beach v. Orange County LAFCO (2012) 209 Cal.App.4th 1182**
  - Annexation of Sunset Beach to Huntington Beach did not require voter approval of extension of Huntington Beach’s taxes into Sunset Beach
  - Prop. 218 not intended to halt annexations
  - Might not work if the sole purpose of the annexation was to extend the reach of a tax
Disadvantaged Unincorporated Communities

- What’s a DUC?
  - GC 56033.5: inhabited territory which is all or part of a community which has an annual median income of less than 80% of state average
  - "inhabited" means 12 or more registered voters unless LAFCO provides otherwise by policy
  - LAFCO has substantial power to define DUCs
  - Statutory focus is on sewer, water and structural fire protection services

DUCs & SOIs

- GC 56425(e)(5) requires SOI update of city or district that provides sewer, water or structural fire protection services to make written determinations re: "the present and probable need for those public facilities and services of any [DUCs] within the existing [SOI]."

DUCs & MSRs

- GC 56430(a)(2): MSR must include written statement of determinations re: "[t]he location and characteristics of any [DUCs] within or contiguous to the [SOI]."
DUCs and Annexation

- GC 36375(a)(8)(A): LAFCO cannot approve an annexation of 10 acres+ (or such other size as LAFCO determines by policy) if a DUC is contiguous to the annexation territory “unless an application to annex the [DUC] to the subject city has been filed with the [EO].”
- GC 36375(a)(8)(B): Unless prior application for that DUC within 5 years and LAFCO determines “based upon written evidence” that majority of voters in DUC oppose annexation.

Open Questions re DUCs

- What’s a DUC?
  - What’s a “community”?
  - What is the “whole community”?
  - What data sources are available?
    - US Census
    - CA DOF
    - General Plans, especially housing elements

Open Questions re DUCs (cont.)

- Must LAFCO approve annexation of DUC that accompanies a contiguous annexation?
  - Statute suggests City must apply, but doesn’t say LAFCO must approve
- How do we pay for it? The underlying issue is a lack of public facilities to serve DUCs. Financing these will not be easy and will require political will that may be lacking.
Reading CKH Like a Lawyer

- The law provides "canons of constructions"—effectively, rules for interpreting rules.
- While a good lawyer can usually argue both sides of any significant question, the canons do help reduce the number of interpretative problems.
- We'll look at some CKH examples and then at some of the more commonly used canons.

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Co. of Fresno v. Malaga CWD (2002)

- 100 Cal.Ap.4th 937: CWD could propose incorporation even though CKH provided for merger of special districts of limited powers as subsidiary districts.
- Canons applied:
  - Interpret to effectuate legislative intent, especially as to choice of competing interpretations
  - Use every word
  - Harmonize multiple statutes

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- 309 F. Supp. 2d 1156 (ND Cal.): GC 56133 could be harmonized with provision of MID's principal act allowing it to sell power outside its boundaries
- Canons applied:
  - Use ordinary meanings unless statute says otherwise
  - Avoid implied repeal of potentially conflicting statutes

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**Hofman Ranch v. Yuba LAFCO (2009)**

- Contract EO was “employee” for purposes of Brown Act closed session authority even though his contract said he was an independent contractor.
- Canons applied:
  - Attorney General opinion did not bind DCA
  - “day to day business” of LAFCO not defined by CKH but meaning could be inferred from other provisions of Act.

**Hofman Ranch (Cont.)**

- Cites “Growth Within Bounds” for its observation that small counties might not need a full-time EO.
- Cites it as legislative history of CKH:
  - Because statute says it is
  - Because provision of statute was potentially ambiguous.

**Placer LAFCO v. Nevada LAFCO (2006)**

- 135 Cal.App.4th 793: principal county controls annexations, MSRs and SOI of a multi-county district, even as to annexations entirely outside that county.
- Canons cited:
  - Give statutory language its usual and ordinary meaning
  - If there is no ambiguity, the plain meaning controls.
Placer v. Nevada LAFCO (Cont.)

- More canons
  - Ambiguity allows court to look to extrinsic sources
    - Ostensible object to be obtained by statute
    - Legislative history
    - Should choose an interpretation which serves legislative intent and promotes rather than frustrates legislative purpose
  - Harmonize all related provisions / no implied repeals (failure to mention MSR or SOI in definition was not reason to exclude them)

Placer v. Nevada LAFCO (Cont.)

- Still more canons:
  - Definitions do not abrogate operative provision
    - Because GC 56010 says definitions apply unless a provision or context otherwise requires
    - Because of the harmonization rule
  - Courts defer to administrative interpretation of statutes
    - OPR Guidelines
    - LAFCO’s own policies

Placer v. Nevada LAFCO (Cont.)

- Also cites “Growth Within Bounds”
More Useful Canons

- Presumption of validity (constitutionality, non-preemption)
- Omitted case was intentionally omitted
- To say one thing is to exclude another
- Unintelligible text is inoperative
- Last antecedent / nearest reasonable referent
- Whole text

Still More Useful Canons

- Consistent Usage
- Surplusage
- General vs. specific provisions
- Associated words ("noscitur a sociis")
- General words following a specific list ("ejusdem generis")
- Non-retroactivity

Questions?