California Association of Local Agency Formation Commissions (CALAFCO)

Incorporation Workshop
Monday, April 30th

Sponsored by:
Best, Best and Krieger
Orange County LAFCO
ProjectDesign Consultants
Rosenow, Spevacek Group

Training Facilitator:
Cynthia Henson
CALAFCO Incorporation Workshop

April 30, 2001
Oakland, California
Workshop Objectives

- Each participant will leave the day with an understanding of the
  - Incorporation process
  - Key decision points for the LAFCO Executive Officer
  - Potential risks or pitfalls
Roles for Meeting

- Facilitator - Cindy
  - agenda, focus, meeting process
- Section Leaders
  - Dana Smith
  - Michael Ott
  - Joe Convery
  - Joyce Crosthwaite
  - Dan Miller
  - Scott Smith
  - Dan Schwarz
Norms for Meeting

- Be on time.
- Listen actively for understanding.
- Everyone participate.
- Focus on issues - no side meetings.
- Share the air time - don’t interrupt.
- Be responsible for your actions and keep your commitments.
- No outside interruptions.
- ??
- ??
### Incorporation Agenda

<table>
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<tr>
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In 25 words or less.......

1. What is your name?

4. What will make this meeting successful for you?

2. What is your role in LAFCO?

5. What is your favorite pastime?

3. What is the most powerful skill you bring to the group?

6. What is your greatest achievement?
Incorporation Time Line
Presenter - Dana Smith

- Generic flow chart
  - Two year process??
  - What should an Executive Officer know?
  - Risks and pitfalls – how do you spell success??
Section # 1
The Application Process

- Presenter:
  - What should an Executive Officer know?
    - Mike Ott, Executive Officer - San Diego
  - What are the legal requirements?
    - Joe Convery, Research Director – San Diego
  - What are the risks and pitfalls?
    - Joyce Crosthwaite, Project Manager – Project Design Consultants
What Should the Executive Officer Know & Do?

- Determine community interest
- Initiate meetings with proponents
- Establish CFA Model
- Establish Consultant Model
- Help establish alternatives
- Help establish timeframe
Determine Community Interest (back-up)

- Review / Subscribe to local newspapers
- Placement on Email lists
- Speaking to (all) community groups
- Maintain neutrality while assessing community interest
Initiate Meeting with Proponents

- Establish working relationship
- Educate on basic requirements
  - Boundaries, spheres, fiscal feasibility
- Explain policies
- Make process more efficient
- Offer to speak to group
CFA Models

- LAFCO prepares
- Proponent prepares
- CFA prepared before or after petitions
- Alternative boundaries / study areas
- Analysis of alternative service / fiscal arrangements
Consultant Models

- LAFCO retains consultant
- Proponent retains consultant
- Who pays consultant - - LAFCO, proponent, combination of LAFCO/proponent??
LAFCO Alternatives

- Service providers
- Boundaries
- Spheres
- Ramifications of alternative service providers, boundaries, and spheres on fiscal feasibility
Timeframe

(back-up)

- Be realistic & don’t promise an unworkable timeline
- Disclose that many variables can affect timeline
- Use broad time ranges, e.g., 6-12 months for application process
- Take great efforts to adhere to timeframe
Legal Requirements of the Application Process

- Joe Convery, Research Director – San Diego LAFCO
What are the Requirements for an Incorporation Application?

- Registered Voter / Property Owner Petition or Resolution of Application
- Map and Legal Description
- Feasibility Study (Draft CFA)
- Processing Fees
- Other Data Required by LAFCO
Registered Voter / Property Owner Petition

(back-up)

- Notice of intent to circulate petition (56700.4)
- Petition contents (56700)
- Petition signatures - 25% of registered voters or property owners (56764)
- Petition time limits - 6 months first signature to last / submitted within 60 Days of last signature (56705)
Resolution of Application
(back-up)

- Any affected local agency (56654)
- Contents same as petition (except for signatures and plan for services)
Map and Legal Description
(back-up)

- Required with petition (56700)
- Cost of preparation
- May follow existing local agency boundaries
Feasibility Study - Draft CFA
(back-up)

- Feasibility Study - Draft CFA required by local LAFCO policies
- History and characteristics
- Plan for providing services
- Rational for boundaries
- Proposed sphere of influence and service review (within one year of incorporation) 56426.5
Processing Fees

(back-up)

- San Diego LAFCO - $10,000 plus 50% of actual LAFCO review costs
- Petition verification (Registrar actual costs)
- Environmental review - actual cost
- Proponents may apply for State loan (56383)
Application Process – Group Exercise

- Presenter – Joyce Crosthwaite, Project Manager, Project Design Consultants
Where are the pitfalls in an application?

- Applicants
- Other agencies
- Timing
- Cost and fees
Applicants

- Eager
- Impatient
- Unappreciative of the beauty of complexity
Other Agencies

- Unable to respond
- Unwilling to respond
- Just plain grumpy
Timing

- Petitions
- CFA
Cost and Fees

- Sticker shock
- Petitions
- Legal description
- CFA
- LAFCO fees
Group Exercise

- Brainstorm with the entire group
- What could you do to mitigate the following risks or pitfalls?
  - Unsophisticated applicants (or their consultants)
  - Uncooperative agencies
  - Timing
  - Cost and fees
- Cindy record on flip chart
- Joyce to add any additional items not mentioned
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Section # 2 – CFA Preparation

- Dan Miller – Rosenow & Spevacek Group
An incorporation proposal shall include a comprehensive fiscal analysis ("CFA") using data from the most recent fiscal year. The CFA shall contain the following:

- Costs of the proposed city for the first three years.
- Revenues of the proposed city for the first three years.
- The effects on the costs and revenues of any affected local agency during the first three years.
Key CFA Components

- Three year revenue and expenditure forecast
- Property Tax Transfer
  - Auditor's Ratio
  - Property Tax Base
  - Tax Allocation Factor
- Revenue Neutrality
- Appropriations Limit
- Bradley Bill Analysis
Property Tax Transfer

■ Auditor’s Ratio
  ■ Calculation - property tax revenues as a percentage of all revenues available for general purposes.

■ Property Tax Base
  ■ Calculation - multiply net expenditures subject to transfer by the Auditor’s Ratio.

■ Tax Allocation Factor
  ■ Calculation - property tax base as a percentage of the estimated one percent of the total assessed value in the first year the city is eligible to receive property tax.
  ■ Purpose – What the city receives above the base year property tax amount, or “Tax increment”.

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Property Tax Transfer Example

CALCULATION OF PROPERTY TAX TRANSFER

A. 1998-99 County Cost Estimates

<table>
<thead>
<tr>
<th>Department/Function</th>
<th>Net County Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sheriff Department</td>
<td>2,929,347</td>
</tr>
<tr>
<td>Animal Control</td>
<td>74,480</td>
</tr>
<tr>
<td>Code Enforcement</td>
<td>53,829</td>
</tr>
<tr>
<td>Street Lighting</td>
<td>116,878</td>
</tr>
<tr>
<td><strong>Total Expenditures – General Fund</strong></td>
<td><strong>3,174,534</strong></td>
</tr>
</tbody>
</table>

B. Transfer of Tax Base

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Expenditures Subject to Transfer</td>
<td>3,174,534</td>
</tr>
<tr>
<td>County Auditor’s Ratio 1998-1999</td>
<td>28.84%</td>
</tr>
<tr>
<td>Property Tax Base Transferred from County:</td>
<td>915,560</td>
</tr>
</tbody>
</table>

C. Calculation of Tax Allocation Factor (TAF)

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<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessed Value (FY 2002/2003):</td>
<td>4,051,833,786</td>
</tr>
<tr>
<td>Total Property Tax Collected @1% AV):</td>
<td>40,518,338</td>
</tr>
<tr>
<td>Property Tax Base Transferred from County:</td>
<td>915,560</td>
</tr>
<tr>
<td><strong>Tax Allocation Factor:</strong></td>
<td><strong>2.26%</strong></td>
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</table>

4/30/01

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Revenue Neutrality

- Revenues currently received by and expenditures currently made by the local agency transferring the territory must be equal.
- The county must be made "whole".
# Revenue Neutrality Example

**CALCULATION OF REVENUE NEUTRALITY PAYMENT**

<table>
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<th>Revenues Transferred</th>
<th></th>
</tr>
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<tbody>
<tr>
<td>Property Taxes</td>
<td>915,560</td>
</tr>
<tr>
<td>Sales Tax</td>
<td>2,916,300</td>
</tr>
<tr>
<td>Real Property Transfer Tax</td>
<td>111,425</td>
</tr>
<tr>
<td>Franchise Fees</td>
<td>582,339</td>
</tr>
<tr>
<td><strong>Total Revenues Transferred</strong></td>
<td><strong>4,525,624</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Expenses (Net of Rev. Offsets)</th>
<th></th>
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<td>2,929,347</td>
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<td><strong>3,174,534</strong></td>
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| County Surplus or (Deficit)                               | ($1,348,800) |

4/30/01

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Appropriations Limit

- Calculation – The estimated amount of tax revenue received by the city in its first full year of operation adjusted to reflect the change in the cost of living and population in the next fiscal year.
### Appropriations Limit Example

**DETERMINATION OF PROVISIONAL APPROPRIATIONS LIMIT**

<table>
<thead>
<tr>
<th>Description</th>
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<tbody>
<tr>
<td>Property Tax</td>
<td>1,087,018</td>
</tr>
<tr>
<td>Sales Tax</td>
<td>3,094,801</td>
</tr>
<tr>
<td>Motor Vehicle In Lieu</td>
<td>2,550,481</td>
</tr>
<tr>
<td>Property Transfer Tax</td>
<td>337,118</td>
</tr>
<tr>
<td>Section 2105</td>
<td>405,810</td>
</tr>
<tr>
<td>Section 2106</td>
<td>291,336</td>
</tr>
<tr>
<td>Section 2107</td>
<td>545,469</td>
</tr>
<tr>
<td>Section 2107.5</td>
<td>6,000</td>
</tr>
<tr>
<td>Measure M</td>
<td>381,810</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>8,699,843</strong></td>
</tr>
<tr>
<td>Interest Earnings</td>
<td>521,991</td>
</tr>
<tr>
<td><strong>Total Proceeds of Taxes</strong></td>
<td><strong>9,221,834</strong></td>
</tr>
<tr>
<td>Cost of Living Factor</td>
<td>3.00%</td>
</tr>
<tr>
<td>Population Growth</td>
<td>1.90%</td>
</tr>
<tr>
<td><strong>Provisional Limit</strong></td>
<td><strong>9,673,703</strong></td>
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Bradley Bill Analysis

- Under state law a new city will not assume service responsibility during the transition period between the effective date and the beginning of the first full fiscal year.

- The county can request reimbursement for the net cost of services provided during the transition period. The new city would have up to five years to reimburse the county for transition year services.
Bradley Bill or "County Repayment" Example

CALCULATION OF COUNTY REPAYMENT

A. Expenditures
   Sheriff Department  3,200,977
   Animal Control      90,269
   Code Enforcement    58,821
   Street Lighting     123,996
   Gross Cost of Transition Year Services  3,474,062

B. Revenues
   Property Tax        915,560
   Sales Tax           758,530
   Franchis Fees       51,483
   Fines and Forfeitures 11,300
   Less Transition Year Revenues Received by County  1,736,872

C. County Repayment (1,737,190)

D. Five-year payment @ 6% 412,403
Step #2 – Group Exercise
CFA (20 minutes)

- Split into 4 sub-groups
- Assign each sub-group a risk or pitfall
- Sub-group has 10 minutes to determine how to mitigate the risk/pitfall.
- Each sub-group present back to the entire group.
- Dan to provide additional points not mentioned by sub-groups.
Risks & Pitfalls

- Auditor’s Ratio
  - What if the auditor includes non recurring revenues? How would you handle it?
    - Tobacco Settlement
    - ERAF
    - Settlement fees
  - What if the Sheriff’s methodology for determining current service costs is different from the way the city contract costs are determined?
Risks & Pitfalls

- Time frame of a CFA
  - Is three years long enough - how would you justify the added expense of preparing a 7-10 year CFA model?

- How would you determine and justify the amount to be dedicated to the city's reserve fund?
Step #2 - CFA

- Additional questions on step #2 – Comprehensive Fiscal Analysis?
Section # 3
Revenue Neutrality

- Scott Smith, Legal Counsel Orange LAFCO (Best, Best, & Kreiger)
- Dan Schwarz, Executive Officer - Napa
Revenue Neutrality

- What are the legal requirements?
  - Negotiations
  - Findings
  - Terms and Conditions
Revenue Neutrality

- What should an Executive Officer know?
  - Policy agreement
  - What is negotiable?
    - Restricted/unrestricted
    - Sales tax/property tax
    - Length of term/lump sum
  - Role of LAFCO
    - Active or passive?
  - Incorporating revenue neutrality back into the CFA
Step #3 – Revenue Neutrality

(20 minutes)

■ Split into 5 sub-groups
■ Assign each sub-group a risk or pitfall
■ Sub-group has 10 minutes to determine how to mitigate the risk/pitfall.
■ Each sub-group present back to the entire group.
■ Scott/Dan to provide additional points not mentioned by sub-groups
Revenue Neutrality

- What are the risks or pitfalls?
  - No agreement reached – what then?
  - Agreement makes incorporation marginal or infeasible
  - Unsophisticated applicants - (can’t negotiate wisely – lack of knowledge or experience etc.)
  - Intransigent county
  - Negotiating revenue neutrality with multiple boundary alternatives – what must you consider?
Step #3 – Revenue Neutrality

- Additional questions on step #3 – Revenue Neutrality?
Step # 4 – Hearing/Election

Peter Banning – Executive Officer – Marin Missing In Action
Hearing/Election

- What are the legal requirements?
  - Noticing
  - Hearing
  - Conducting Authority
  - Impartial Analysis
  - Recordings
Noticing Requirements
(back-up)

- 21-day notice required: published, posted and mailed.
- Do more than required in order to **Avoid** Surprises at the Public Hearing!
- Surprised citizens are fearful and don't listen well
- Surprised commissioners may not be able to act
- Surprised staff looks ugly and may experience nausea.
Incorporation Hearing

- Consider holding a preliminary hearing or workshop to:
  - Prepare staff presentation
  - Ensure all issues are identified
  - Test community reaction to alternatives
  - Help prepare Commission to take action
  - Maximize notice, publicity and participation
  - Maximize contacts with proponents and opponents prior to hearing
Conducting Authority Hearing

- Schedule and provide notice for protest hearing just after close of 30-day period
Election
(back-up)

- Election must be at least 88 days from the date the election is called.
- LAFCO Executive Officer drafts an impartial analysis of the incorporation issue for the election ballot: within five days of Board action to call the election.
- 500 words or less
Hearing/Election

- What should the Executive Officer know?
Knowing your Resolution

- You must be master of all of the following contents of the Resolution:
  - Findings that LAFCO has considered policies under 56375.1 (new section #?)
  - Adopted terms and conditions, including the effective date & many others
  - Terms and conditions for the transfer of property to the new city - attachments
  - Findings on Revenue Neutrality
Knowing your Resolution (cont’d)

- Final incorporation boundaries
- Acceptance or rejection of the CFA findings of Executive Officer
- Number of registered voters within incorporating area
- Action on Environmental Review
Knowing your Resolution (cont’d)

- Amount of Property tax distributed to new city
- Interim appropriations limit
- Extension of County authority to charge
- Statement of Determinations SOI
- Finding of consistency with other adopted spheres of influence
Step #4 – Hearing/Election

- What are the risks or pitfalls?
  - NOT being fully prepared
  - Requests for reconsideration
Avoiding Pitfalls

- Fully brief your commissioners on CFA, CEQA document, resolution contents
- Consider press release and public appearances by Executive Officer and Chair to describe issues, alternatives and LAFCO incorporation process
- If major issues are not resolved prior to hearing, reschedule.
Reconsideration Requests

(back-up)

- Usual reconsideration process applies. Any reconsideration request must:
  - Be made in writing
  - State the specific modification to the resolution being requested
  - Identify new or different facts or applicable new law not previously considered by the commission
Step #4 – Hearing/Election

- Additional questions on step #4 – Hearing/Election?
Meeting Summary

- Did we accomplish the three objectives?
  - An understanding of the
    - Incorporation Process
    - Key Decision points for the LAFCO Executive Officer
    - Potential Risks or Pitfalls
- Did we address your ideas on what would make a meeting successful?
Process Check

- What worked well today?
- What could be improved?
Wrap-up

- Final Comments
  - Participants?
  - Dana?