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73-59 ANNEXATION & BOUNDARY ISSUES § 73.16(1)

a LAFCO adopts a sphere of influence because that decision is not an entitlement for use.<sup>39</sup>

**[5]—Other State Agencies**

The State Lands Commission must give its formal approval before a LAFCO can approve a proposal to incorporate or annex tidelands or submerged lands into a city.<sup>40</sup> The Public Utilities Commission must investigate and report before a LAFCO can allow a special district to provide gas or electrical service in the service area of a regulated public utility.<sup>41</sup> The LAFCO executive officer must notify four state agencies of proposed boundary changes affecting local hospital districts.<sup>42</sup> All state agencies or departments must cooperate with the LAFCOs and furnish any requested documents or information.<sup>43</sup> After the conducting authority successfully completes its proceedings, the LAFCO executive officer files a formal notice with the State Board of Equalization.<sup>44</sup>

**§ 73.16 Judicial Review**

**[1]—Judicial Review of LAFCOs' Decisions**

The Legislature has directed that the Cortese-Knox-Hertzberg Act<sup>1</sup> "be liberally construed to effectuate its purposes."<sup>2</sup> A LAFCO's actions are presumed to comply with the statutes because the Legislature created the LAFCOs to implement these statutes.<sup>3</sup> Absent fraud or prejudicial abuse of discretion, boundary decisions by a LAFCO or other local agencies are "final and conclusive."<sup>4</sup> A LAFCO's decisions are reviewable only to determine if they are supported by substantial evidence.<sup>5</sup>

<sup>39</sup> City of Agoura Hills v. Local Agency Formation Com. (1988) 198 Cal. App. 3d 480, 485, 243 Cal. Rptr. 740; see § 73.11(3)(d)(ii) for a discussion of economic conflicts of interest.

<sup>40</sup> Gov. Code § 56740; 57 Ops. Cal. Atty. Gen. 599, 602 (1974).

<sup>41</sup> Gov. Code §§ 56129-56131.

<sup>42</sup> Gov. Code § 56131.5.

<sup>43</sup> Gov. Code §§ 56378, 56386.

<sup>44</sup> Gov. Code § 57204; see § 73.13(7).

<sup>1</sup> Gov. Code § 56000 et seq.

<sup>2</sup> Gov. Code § 56107(a).

<sup>3</sup> City of Livermore v. Local Agency Formation Com. (1986) 184 Cal. App. 3d 531, 543, 230 Cal. Rptr. 867.

<sup>4</sup> Gov. Code § 56107(b).

<sup>5</sup> Gov. Code § 56107(c); see City of Agoura Hills v. Local Agency Formation Com. (1988) 198 Cal. App. 3d 480, 489, 243 Cal. Rptr. 740; Simi Valley Recreation & Park Dist. v. Local Agency Formation Com. (1975) 51 Cal. App. 3d 648, 686-687, 124 Cal. Rptr. 635.

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CALIFORNIA ENVIRONMENTAL LAW

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**PRACTICE TIP: Objections to Boundary Decisions.** Opponents and their legal advisors should take care to raise timely objections to the regularity of a LAFCO's proceedings. Any protests or objections pertaining to a LAFCO's boundary decisions must be in writing and must specifically identify the objectionable defect, error, irregularity, or omission. Failure to protest waives the ability to object later.<sup>6</sup> Anticipating litigation, an opponent should ask for a formal transcript of the LAFCO's meeting. The request must come before the meeting, and the requester pays the cost.<sup>7</sup>

If a boundary change is not yet complete, the appropriate challenge is a petition for a writ of mandamus.<sup>8</sup> The courts use ordinary mandamus to review a LAFCO's decision on a boundary change.<sup>9</sup> The courts have held that boundary changes are legislative in nature, that the Legislature has delegated its authority to LAFCOs, and that the LAFCOs' functions are quasi-legislative in nature.<sup>10</sup> Although a LAFCO is an administrative agency created by the Legislature, the power that a LAFCO exercises is legislative and, therefore, the appropriate standard of review is ordinary mandamus, not administrative mandamus.<sup>11</sup>

Although a LAFCO's boundary decisions under the Cortese-Knox-Hertzberg Act are quasi-legislative and thus do not require formal findings based on substantial evidence, a LAFCO's actions as a lead agency or a responsible agency under the California Environmental Quality Act (CEQA) do require findings.<sup>12</sup>

## **[2]—Judicial Review of Completed Boundary Changes**

Mandamus is no longer available after a boundary change is completed,<sup>13</sup> but two other methods remain: (1) an *in rem* validation action, and (2) *quo warranto* proceedings by the Attorney General.

<sup>6</sup> Gov. Code § 56105; *Del Paso Recreation & Park Dist. v. Board of Supervisors* (1973) 33 Cal. App. 3d 483, 494, 109 Cal. Rptr. 169.

<sup>7</sup> Gov. Code § 56379.

<sup>8</sup> *Hills For Everyone v. Local Agency Formation Com.* (1980) 105 Cal. App. 3d 461, 467, 164 Cal. Rptr. 420; *Bozung v. Local Agency Formation Com.* (1975) 13 Cal. 3d 263, 272, 118 Cal. Rptr. 249, 529 P.2d 1017.

<sup>9</sup> *City of Santa Clara v. Local Agency Formation Com.* (1983) 139 Cal. App. 3d 923, 927 n.3, 189 Cal. Rptr. 112; see Code Civ. Proc. § 1085.

<sup>10</sup> *City of Santa Cruz v. Local Agency Formation Com.* (1978) 76 Cal. App. 3d 381, 387, 142 Cal. Rptr. 873.

<sup>11</sup> *Horwath v. Local Agency Formation Com.* (1983) 143 Cal. App. 3d 177, 182, 191 Cal. Rptr. 593; *City of Santa Cruz v. Local Agency Formation Com.* (1978) 76 Cal. App. 3d 381, 390, 142 Cal. Rptr. 873.

<sup>12</sup> *Resource Defense Fund v. Local Agency Formation Com.* (1987) 191 Cal. App. 3d 886, 896-898, 236 Cal. Rptr. 794.

<sup>13</sup> See [1], above; see also § 73.13[7] (completion of proceedings).

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An interested person may file a validation action, asking the court to rule on the validity of the boundary change.<sup>14</sup> The deadline for filing a validating suit is 60 days from the date that LAFCO's executive officer files the certificate of completion.<sup>15</sup>

**PRACTICE TIP: Follow Procedural Requirements of Validation Actions.** Plaintiffs must take care to follow the procedural requirements of validation actions, or their challenges may be dismissed.<sup>16</sup> Defendants may be able to rely on the annual Validating Acts that cure minor technical defects in boundary changes. By their own terms, however, the annual Validating Acts cannot protect against illegal or unconstitutional actions.<sup>17</sup>

The Attorney General may file a *quo warranto* proceeding to challenge a completed boundary change.<sup>18</sup> Alternatively, rather than file the *quo warranto* action directly, the Attorney General may authorize another party to file the suit.

**PRACTICE TIP: Quo Warranto Challenges Are Unlikely.** The Attorney General rarely challenges boundary changes with *quo warranto* suits. There are no recent reported appellate decisions over *quo warranto* cases involving boundary changes. The last time that the Attorney General authorized another party to sue in *quo warranto* over an annexation was in November 1988 when the State Department of Food and Agriculture objected to the City of Madera's annexation of a fairground. After the Attorney General authorized the Department to hire outside counsel and sue in *quo warranto*, the parties settled the case without a reported decision.

<sup>14</sup> *Citizens Against Forced Annexation v. County of Santa Clara* (1984) 153 Cal. App. 3d 89, 94-100, 200 Cal. Rptr. 166; Gov. Code §§ 56102, 56103; Code Civ. Proc. § 860. The opportunity to validate a local agency's boundaries under Code Civ. Proc. § 349.4 appears archaic, and the validation proceedings described above probably supersede that provision.

<sup>15</sup> Gov. Code §§ 56102, 57201; Code Civ. Proc. § 860; see § 73.13[7] (completion of proceedings).

<sup>16</sup> Code Civ. Proc. § 863; *Schaeffer v. County of Santa Clara* (1984) 155 Cal. App. 3d 901, 905-906, 202 Cal. Rptr. 515; *Environmental Coalition of Orange County, Inc. v. Local Agency Formation Com.* (1980) 110 Cal. App. 3d 164, 170, 167 Cal. Rptr. 735.

<sup>17</sup> See, e.g., three Validating Acts of 2000: 2000 Stats., Chs. 24, 229, and 230.

<sup>18</sup> *Hills For Everyone v. Local Agency Formation Com.* (1980) 105 Cal. App. 3d 461, 467, 164 Cal. Rptr. 420; Code Civ. Proc. § 803.