



LAFCOs, General Plans, and City Annexations

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Introduction

“It is the intent of the Legislature that each commission . . . establish written policies and procedures and exercise its powers . . . in a manner consistent with those policies and procedures to encourage and provide planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space lands within those patterns. . . . Among the purposes of a commission are discouraging urban sprawl, preserving open-space and prime agricultural lands, efficiently providing government services, and encouraging the orderly formation and development of local agencies based upon local conditions and circumstances” (Gov. Code Section 56300 and 56301).

Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, as Amended, Title 5, Division 3, Part 2, California Government Code

In 2000, the Legislature passed AB 2838 (Chapter 761, Statutes of 2000) making the broadest and most significant set of sweeping changes to local government reorganization law since the creation of Local Agency Formation Commissions (LAFCOs). In addition to renaming the act the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (“CKH Act”), AB 2838 affirmed and strengthened the role of LAFCO in helping shape the future physical and economic growth and development of the State, including, once again, the role of LAFCO in annexation proceedings.

To provide a primer on LAFCOs from a land use planning perspective, the Governor’s Office of Planning and Research (OPR), in cooperation with the California Association of Local Agency Formation Commissions (CALAFCO), has prepared this publication about the city annexation process, the California Environmental Quality Act (CEQA) and local general plans. The CKH Act provides opportunities for dovetailing the requirements of the Planning and Zoning, CEQA and annexation laws which, in turn, can promote efficiency in processing applications. OPR and CALAFCO also recognize that early consultation and collaboration between local agencies and LAFCO on annexations is a best practice that is encouraged in this publication, including coordination on CEQA review, general process and procedures, and fiscal issues.

Although the CKH Act addresses district formation, incorporation, and other types of changes of organization, this publication focuses on city annexations. Consequently, it is geared towards the non-LAFCO planner and city official and is not intended to be an in-depth, technical discussion of the CKH Act. OPR and CALAFCO offer best practice tips, relevant to current and emerging trends and topics in California land use law and the CKH Act. This publication is based upon OPR’s and CALAFCO’s reading of current State statute, recent case law, and the General Plan Guidelines, as updated by OPR. References are to the California Government Code unless otherwise indicated.

For a review of the CKH Act as it relates to California planning, zoning, and development laws, please refer to Guide to California Planning, 3rd Edition or Longtin’s California Land Use, 2nd Edition. These general references address planning, zoning, subdivisions, sign controls, and exactions, as well as LAFCO activities. For more general information about the role, structure, and powers of LAFCOs, refer to *It’s Time to Draw the Line: A Citizen’s Guide to LAFCOs* (May 2003).

Background: The Role of the LAFCO

The Knox-Nisbet Act, the Municipal Organization Act (MORGA), and the District Reorganization Act – three separate, but interrelated State laws – authorized local boundary changes and municipal reorganization, such as annexations, incorporations, and the creation of special districts. Long-standing difficulties in implementing and reconciling these distinct, and at times incompatible, laws led the Legislature to adopt the Cortese-Knox Local Government Reorganization Act. The Cortese-Knox Act combined these statutes into a single law, which eliminated duplicate and incompatible sections.

In 2000, the Legislature passed AB 2838 (Hertzberg), which was the most significant and comprehensive legislative reform to local government reorganization law since the 1963 statute that originally created LAFCOs in each county. Development of the legislation resulted from the recommendations of the Commission on Local Governance for the 21st Century. For more information on the Commission, please see their 2000 publication, *Growth Within Bounds*.

AB 2838 (Hertzberg, 2000), recognizes and affirms the important role that LAFCOs play in California in serving as an arm of the State, not only in the oversight of local government boundaries, but in evaluating and guiding the efficient, cost-effective, and reliable delivery of municipal services to California’s citizenry. AB 2838 expanded the powers and duties of LAFCO, in its decision-making role in government organization changes, and its examination and guidance of municipal service location and extension timing. The CKH Act provides the framework for proposed city and special district annexations, incorporations/formations, consolidations, and other changes of organization. This law establishes a LAFCO in each county, empowering it to review, approve, or deny proposals for boundary changes and incorporations/formations for cities, counties, and special districts.

LAFCOs are composed of elected officials from the county and local cities, and a member of the general public. As of 2011, 29 of the 58 LAFCOs also have special district representation. In addition, some LAFCOs have special membership pursuant to the CKH Act.

The State delegates each LAFCO the power to review and approve with or without amendment, wholly, partially, or conditionally, or disapprove proposed annexations, reorganizations, and incorporations, consistent with written policies, procedures, and guidelines adopted by the commission. In granting these powers, the State has occupied the field of annexation law to the exclusion of local legislation. Therefore, a city or county cannot take actions which hinder or conflict with State annexation procedures. For this reason, a city cannot adopt a local ordinance which would allow city voters to pass sole judgment on proposed annexation proceedings (*Ferrini v. City of San Luis Obispo* (1983) 150 Cal.App.3d 239 and *L.I.F.E. v. City of Lodi* (1989) 213 Cal.App.3d 1139). A city also cannot circumvent annexation law or the LAFCO process and cannot provide new or extended services outside its jurisdictional boundaries unless approved by LAFCO under specified circumstances (Section 56133).

Best Practice Tip #1

If you have a controversial or complicated annexation proposal, talk to the LAFCO executive officer about “Terms and Conditions.” LAFCO has broad authority to impose Terms and Conditions on annexations that can guide or influence which agency does what, where, when, and how as part of the annexation. Cities and other stakeholders can work with LAFCO to craft Terms and Conditions that address potential barriers to annexations.

Each LAFCO operates independently of the State and of local government agencies. However, LAFCO is expected to act within a set of State-mandated parameters encouraging “planned, well-ordered, efficient urban development patterns,” the preservation of open-space lands, and the discouragement of urban sprawl. The Legislature has taken

care to guide the actions of the LAFCOs by providing Statewide policies and priorities (Section 56301), and by establishing criteria for the delineation of spheres of influence (SOIs) (Section 56425).

Local Government Role in Planning and Regulating Land Use

Local governments have the primary responsibility for planning and regulation of land uses. State law requires each city and county to prepare and adopt a “comprehensive, long-term general plan for the physical development” of the community. This general plan must cover all incorporated territory and should go beyond the city limits to include “any land outside its boundaries which ...bears relation to its planning” (Section 65300).

A city’s general plan is an important statement of the city’s future intent. It allows city officials to indicate to State agencies, local governments, and the public their concerns for the future of surrounding unincorporated lands. Since the general plan is a policy document with a long-term perspective, it may logically include adjacent territory the city ultimately expects to annex or to serve, as well as any area which is of particular interest to the city. The city’s SOI (which is established by the LAFCO) describes its probable physical boundaries and service area and can therefore be used as a benchmark for the maximum extent of the city’s future service area. The city may choose to plan for land uses beyond its SOI when coordinating plans with those of other jurisdictions (2003 General Plan Guidelines).

Through legislation and case law, the general plan has assumed the status of the “constitution for all future development” (*Citizens of Goleta Valley v. Board of Supervisors of the County of Santa Barbara* (1990) 52 Cal.3d 553). As a result, most local land use decision-making now requires consistency with the general plan. The same is true of public works projects (*Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988) and, in several cases, voter zoning initiatives (*Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531 and *Goleta*, supra).

Senate Bill 244 (Chapter 514, Statutes 2011, Wolk) amended general plan statutes to include planning for unincorporated disadvantaged communities. Cities, on or before the due date for the next adoption of its housing element, must review and update the land use element of their general plans to include the identification of unincorporated island or fringe communities within the city’s SOI, and to analyze for each identified community: (1) “water, wastewater, stormwater drainage, and structural fire protection needs or deficiencies”; and (2) “benefit assessment districts or other financing alternatives that could make the extension of services to identified communities financially feasible” (Section 65302.10). SB 244 is discussed further in the “Disadvantaged Unincorporated Communities” section of this publication.

Annexations

Annexation is the means by which an existing city extends its corporate boundaries. In its most basic form, annexation can be considered a five-part process. The steps are generally outlined below. Please refer to the flowchart on page 23 for a visual outline of the process.

Pre-Application

An application may be filed with the LAFCO by petition of affected landowners or registered voters, or by resolution from the involved city. Prior to filing, the proponent should meet with the LAFCO executive officer to establish the minimum requirements for processing, and then meet with any affected special districts and agencies to agree upon a taxation scheme and needed property tax transfers. Unless determined to be statutorily or categorically exempt from CEQA, LAFCO's action is considered a "project" that is subject to CEQA review, and an initial study will be required. The CKH Act requires rezoning of the site by the affected city. This usually makes the city the "lead agency" for CEQA documents and the LAFCO a "responsible agency." The city should coordinate with the LAFCO early on in the application process to ensure LAFCO's action on the annexation is adequately covered by the CEQA document. In most cases, the city (or the private proponent) will be responsible for preparing the initial study and the environmental document with LAFCO input.

Best Practice Tip #2

Meet with the LAFCO executive officer as early as possible to discuss the annexation proposal, identify potential political, financial, or procedural "red flags," and understand the local LAFCO's application requirements. Section 56652 gives LAFCO broad authority to require data and information as part of the application. While application requirements vary between LAFCOs, typical application requirements include:

- Application form
- Filing and Processing Fees
- CEQA and rezoning documentation
- Map and metes and bounds legal description
- Plan for providing services (required by Section 56653)
- Property tax exchange resolutions
- Associated SOI amendments, if required

Application Filing and Processing

LAFCO has 30 days to review an annexation application and determine that it is complete for processing, or notify the applicant that the application is not complete. If an annexation application also includes the detachment of territory from a city or annexation to a special district, LAFCO must follow special procedures that provide the detaching city or annexing special district the opportunity to request termination of the proceedings by resolution (Sections 56751 and 56857). LAFCO must honor the request. When a local agency initiates annexation by resolution of application, it must submit a plan for providing services. At a minimum, the plan must address the type, level, range, timing, and financing of services to be extended, including requirements for infrastructure or other public facilities. Before the executive officer issues a certificate of filing, the involved city, county, and affected special districts are required to negotiate the allocation of property tax revenues during a 60-day mandatory negotiation period, unless extended to 90 days (Revenue & Taxation Code Section 99 and 71 Ops.Cal.Atty.Gen. 344 (1988)). If an agreement is not reached, Revenue and Taxation Code Section 99(e)(1) outlines an alternative negotiation, mediation, and arbitration process that is required by statute.

The law does not require they reach agreement at the end of this process. Nonetheless, if the city and county cannot reach an agreement on the exchange of property tax, an impasse will stall or could terminate the process (*Greenwood Addition Homeowners Association v. City of San Marino* (1993) 14 Cal.App.4th 1360). Without an agreement, the executive officer is prohibited from issuing a certificate of filing which is a precondition to LAFCO's consideration of an application for annexation; the application cannot proceed.

Once the application has been accepted as complete, the executive officer will issue a certificate of filing and set the proposal for commission consideration within 90 days. During the application process, LAFCO will work with the applicant and affected agencies to analyze the proposed annexation in light of the commission's State mandated evaluation criteria (Section 56668) and responsibilities, and its own locally adopted policies and procedures.

LAFCO Review and Consideration

LAFCO may approve, conditionally approve, or deny the proposed annexation. LAFCO cannot disapprove an annexation if it meets certain requirements (Section 56375(a)(4), including "island annexations" that are 150 acres or fewer in size (Section 56375.3). However, only in the latter case are protests required to be waived, if all criteria are met. The lead agency, whether it is the LAFCO or the involved city, must comply with CEQA requirements prior to the LAFCO's action. Within 30 days of the LAFCO's resolution, any person or affected agency may file a written request with the executive officer for reconsideration of the annexation proposal based on new or different facts that could not have been presented previously (Section 56895).

Protest Proceedings

Unless waived pursuant to Section 56375.3 as an island annexation, or in cases where landowners have provided written consent (56663)(a)(c) or have not objected after receiving notice of the commission's intent to waive protest proceedings (56663)(d), LAFCO, acting as the "conducting authority" in accordance with the requirements of the CKH Act, will hold a public protest hearing to determine whether the proposed annexation must be terminated, or approved with or without an election, to determine the proposal's outcome.

For annexations of inhabited territory (containing 12 or more registered voters), LAFCO must: 1) Terminate the proceedings if it receives protests from 50 percent or more of the registered voters within the territory; 2) Order the annexation subject to an election if it receives protests from either at least 25 percent, but less than 50 percent, of the registered voters residing in the affected territory or from at least 25 percent of the number of owners of land who also own at least 25 percent of the assessed value of land within the affected territory; or, 3) Order the annexation without an election if it receives protests from less than 25 percent of the registered voters or less than 25 percent of the number of owners of land owning less than 25 percent of the assessed value of land within the affected territory.

For annexations of uninhabited territory (containing fewer than 12 registered voters), the LAFCO must: 1) Terminate

Best Practice Tip #3

Annexation attempts can fail if the affected city and county cannot reach agreement on a property tax split. In the early planning stages, the applicant should ascertain if a master property tax exchange agreement exists between the affected city and the county, and if there are concerns about the likelihood of a property tax exchange agreement. Property tax exchange agreements can be structured to address fiscal and related issues.

Best Practice Tip #4

There are examples around the State of annexations that have involved pre-annexation agreements and development agreements by cities, counties, and landowners/developers that align the timing and structure of the annexation process relative to the city and/or county entitlement and development phasing process.

the proceedings if it receives protests from landowners owning 50 percent or more of the assessed value of the land within the territory; or, 2) Order the change of organization or reorganization if it receives protests from owners of land who own less than 50 percent of the total assessed value of land within the affected territory. If the proposal is terminated, the executive officer will issue a certificate of termination of proceedings and no new annexation may be proposed on the site for at least one year, unless the LAFCO waives the limitation upon finding that the limitation is detrimental to the public interest (Section 57090). When an election is required, registered voters residing within the affected territory are entitled to vote on the issue of annexation (Section 57142).

Final Certification

When the LAFCO executive officer is satisfied that all elements of the CKH Act have been properly addressed, and that all conditions have been met, the executive officer will issue a certificate of completion. The annexation is not complete until it has been certified by the executive officer (Section 57200). The commission may establish an “effective date” for the annexation. Alternatively, the effective date will be the date the certificate of completion is recorded by the County Recorder (Section 57202). Once the annexation is recorded, there is no administrative recourse except by legal challenge.

Consistent Annexations

State law does not mandate that annexations conform to local general plans beyond requiring that “the decision of the [LAFCO] commission with regard to a proposal to annex territory to a city shall be based upon the general plan and rezoning of the city” (56375)(a)(7). However, the commission will also consider “consistency with the city or county general and specific plans” when appropriate (Section 56668(g)). Nonetheless, the statutes contain numerous references that attempt to link local land use and open-space policies, including Williamson Act contracts, to the annexation process (Sections 56300, 56375, 56377, 56425). Accordingly, the commission should attempt to harmonize local planning policies with the intent of the State legislation. Where there is a clear conflict, such as incompatibility between city and county general plans, the State precepts should prevail.

The factors that the LAFCO must consider in reviewing annexation proposals include, but are not limited to, the following (Section 56668):

- a) Population and population density; land area and land use; per capita assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas, during the next 10 years.
- b) The need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed incorporation, formation, annexation, or exclusion and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas.
- c) The effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county.
- d) The conformity of both the proposal and its anticipated effects with both the adopted commission policies on providing planned, orderly, efficient patterns of urban development, and the policies and priorities in Section 56377.
- e) The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by Section 56016.
- f) The definiteness and certainty of the boundaries of the territory, the nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory, and other similar matters affecting the proposed boundaries.
- g) A regional transportation plan adopted pursuant to Section 65080, and its consistency with city or county general and specific plans.
- h) The SOI of any local agency which may be applicable to the proposal being reviewed.

Best Practice Tip #5

As of 2008, LAFCOs must consider regional transportation plans and sustainable communities strategies (SB 375, Chapter 728, Statutes of 2008); the timely availability of water supplies; regional housing needs assessment (RHNA) allocations; and the promotion of environmental justice. Check with your LAFCO for local policies and procedures that may exist to address these factors and others listed in Section 56668. It is also good practice to include LAFCO consideration of these factors in the lead agency’s CEQA document.

- i) The comments of any affected local agency or other public agency.
- j) The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for those services following the proposed boundary change.
- k) Timely availability of water supplies adequate for projected needs as specified in Section 65352.5.
- l) The extent to which the proposal will affect a city or cities, and the county in achieving their respective fair shares of the regional housing needs as determined by the appropriate council of governments consistent with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7.
- m) Any information or comments from the landowner or owners, voters, or residents of the affected territory.
- n) Any information relating to existing land use designations.
- o) The extent to which the proposal will promote environmental justice. As used in this subdivision, “environmental justice” means the fair treatment of people of all races, cultures, and incomes with respect to the location of public facilities and the provision of public services.

Island Annexations

Under Government Code Section 56375(a)(4), a LAFCO is required to approve a city’s request to annex land adjacent to its borders when the commission finds that any of the following circumstances exist:

- a) The land is substantially surrounded by the city or the Pacific Ocean, is substantially developed or developing, is not prime agricultural land, is designated for urban growth in the city’s general plan, and is not within the SOI of another city.
- b) The land is located within an urban service area designated by the LAFCO, is not prime agricultural land, and is designated for urban growth in the city’s general plan.
- c) The land meets the criteria for unincorporated islands under Section 56375.3.

Best Practice Tip #6

Before proceeding with a small island annexation, verify the effective sunset date of Section 56375.3. The current sunset date is January 1, 2014.

Best Practice Tip #7

The Attorney General has opined that, for annexations that include protest procedures, such procedures satisfy the voter approval requirements of Proposition 218 where the annexation is conditioned on a tax, assessment or fee being extended to the affected territory (82 Ops.Cal.Atty.Gen. 180 (1999)). To date, however, there has been no Attorney General Opinion or court decision on whether the voter requirements of Proposition 218 apply to small island annexations under Section 56375.3, for which protest proceedings are expressly waived. Before proceeding with a small island annexation, talk to your local LAFCO executive officer about the application of Proposition 218 to your proposal.

Island annexations under Section 56375.3 must be approved by LAFCO, with or without terms and conditions, and protest proceedings must be waived. This special provision was added to the Cortese-Knox Act in 2000 with the passage of AB 1555 (Chapter 921, Statutes of 1999), a bill sponsored by the League of California Cities to streamline

“small island annexations” (islands 150 acres or less) that are in the interest of the public welfare. The bill included a “sunset” date for these special provisions. The sunset date was previously extended by the Legislature. The current sunset date is January 1, 2014.

Best Practice Tip #8

Talk to your local LAFCO executive officer about local policies or procedures the LAFCO may have adopted to address the implementation of legislative changes to the CKH Act, like SB 244 (Wolk, 2011).

Disadvantaged Unincorporated Communities

On October 7, 2011, Governor Edmund G. Brown, Jr. signed SB 244 (Wolk) into law (Chapter 513, Statutes of 2011) making changes to the CKH Act related to “disadvantaged unincorporated communities.” The legislative intent of this law is “to encourage investment in these communities and address the complex legal, financial, and political barriers that contribute to regional inequity and infrastructure deficits” within them. A disadvantaged unincorporated community is defined in the CKH Act (Section 56033.5) as “inhabited territory...or as determined by commission policy, that constitutes all or a portion of a disadvantaged community as defined by Section 79505.5 of the Water Code,” which states, “a community with an annual median household income that is less than 80 percent of the Statewide annual median household income.”

SB 244 made several changes to the CKH Act:

1. It prohibits LAFCO from approving an annexation to a city of any territory greater than 10 acres, or as determined by commission policy, where there exists a disadvantaged unincorporated community that is contiguous to the proposed annexation area unless an application to annex the disadvantaged unincorporated community to the subject city has been filed with the LAFCO. However, an application to annex a contiguous disadvantaged unincorporated community is not required if a prior application for annexation of the same community has been made within the preceding five years or if the commission finds that a majority of residents of the community are opposed to annexation.
2. For an update of a sphere of influence of a city or district that provides public facilities or services related to sewers, municipal and industrial water, or structural fire protection that occurs after July 1, 2012, LAFCO must consider the present and probable need for public facilities and services of any disadvantaged unincorporated communities within the existing sphere of influence. The commission may assess the feasibility of governmental reorganization of agencies to further the goals of orderly development and efficient and affordable service delivery.
3. LAFCO must include, in its statement of written determinations of municipal service reviews considerations relating to disadvantaged unincorporated communities within or contiguous to an agency’s sphere of influence.

Spheres of Influence and Municipal Service Reviews

Spheres of Influence

LAFCOs exercise both regulatory and planning functions. While annexations are a regulatory act, LAFCOs' major planning task is the establishment, periodic review, and update of SOIs for the various governmental bodies within their jurisdictions. As described by Section 56076, the SOI is "a plan for the probable physical boundaries and service area of a local government agency as determined by the commission." In establishing, amending, or updating a SOI, a LAFCO must consider and make written determinations with regard to the following factors (Section 56425(e)):

1. The present and planned uses in the area, including agricultural and open-space lands.
2. The present and probable need for public facilities and services in the area.
3. The present capacity of public facilities and the adequacy of public services that the agency provides or is authorized to provide.
4. The existence of any social or economic communities of interest in the area if the commission determines that they are relevant to the agency.
5. For an update of a sphere of influence of a city or special district that provides public facilities or services related to sewers, municipal and industrial water, or structural fire protection, that occurs on or after July 1, 2012, the present and probable need for those public facilities and services of any disadvantaged unincorporated communities within the existing sphere of influence (SB 244 (Chapter 513, Statutes of 2011)).

The SOI is an important benchmark because it defines the primary area within which urban development is to be encouraged (Section 56425). In a 1977 opinion, the California Attorney General stated that an agency's SOI should "serve like general plans, serve as an essential planning tool to combat urban sprawl and provide well planned efficient urban development patterns, giving appropriate consideration to preserving prime agricultural and other open-space lands" (60 Ops.Cal.Atty.Gen. 118). Like general plans, SOIs may be reviewed and updated from time to time, or upon request by any person or local agency. SOIs may also be reviewed and updated following significant changes in regional or State policy that may affect an existing SOI, such as the adoption of a Sustainable Communities Strategy consistent with Senate Bill 375 (Chapter 728, Statutes of 2008). The CKH Act provides that every five years, LAFCO shall, as necessary, review and update each local agency's SOI under LAFCO jurisdiction.

The California Appellate Court holds that SOIs must be adopted before an annexation to the affected city or district can be considered. (*Resource Defense Fund v. LAFCO* (1983) 138 Cal.App.3d 987). Depending on local policy, some LAFCOs consider SOI amendments and associated annexations separately. Section 56427 requires LAFCO to send notice of pending annexation hearings to those affected agencies whose SOIs contain territory within the proposal.

LAFCO has sole responsibility for establishing a city's SOI. For cities with territory in more than one county, the LAFCO in the county having the greater portion of the entire assessed value of all taxable property within the

city has exclusive jurisdiction to determine the city's SOI and conduct municipal service reviews (Placer County LAFCO v. Nevada County LAFCO (2006) 135 Cal.App.4th 793). Further, the LAFCO is not required to establish an SOI that is greater than the city's existing boundaries. LAFCO may take joint action to approve an annexation while at the same time amending the city's SOI. (City of Agoura Hills v. LAFCO (1988) 198 Cal.App.3d 480).

LAFCO officials and local decision-makers recognize the logical assumption that the lands lying within the SOI are those that the city may someday propose to annex. If the city finds that annexing an area outside its SOI would be in the public interest, it should first request that its SOI be amended to include that area.

City-County Coordination in Spheres of Influence

Counties possess sole land use jurisdiction over unincorporated territory whether located outside or inside of a city's SOI. When the Legislature passed AB 2838, it recognized that, as the future service provider of unincorporated land in a city's SOI, the city should have an opportunity to address how land in the SOI is planned for and developed in anticipation of future annexation. This has both physical and fiscal ramifications for cities as future service providers. Before a city submits an application to LAFCO to update its SOI, the city and county shall meet in an effort to reach agreement on the SOI boundaries and the development standards and planning and zoning requirements within the SOI (Section 56425(b)).

Best Practice Tip #9

The CKH Act encourages collaboration among LAFCOs, cities, counties, landowners, and other local agencies to balance the timing and location of development within SOIs, including the establishment of SOIs in concert with long-range land use planning and annexations in concert with development entitlements and the extension of services. This is consistent with the legislative intent of the CKH Act to promote orderly development, discourage urban sprawl, preserve open space and prime agricultural lands, provide housing for persons and families of all incomes, and encourage the efficient extension of governmental services.

Under a separate but related provision of the CKH Act, LAFCO has the authority to review and comment on the extension of services into previously unserved, unincorporated territory, whether inside or outside of a city's SOI, including the creation of new service providers to extend "urban type development" into previously unserved, unincorporated territory (Section 56434). This provision of the CKH Act is scheduled to sunset on January 1, 2013.

Municipal Service Reviews

Another major change to LAFCO law from AB 2838 was the requirement for LAFCO to conduct municipal service reviews (MSRs) before or in conjunction with the establishment or update of SOIs (Section 56430). MSRs are conducted by geographic area or countywide and include a comprehensive review of all agencies that provide the services LAFCO identifies. As part of its review, LAFCO can evaluate alternatives for improving efficiency and affordability of infrastructure and service delivery. LAFCO is required to make seven written determinations for MSRs:

Best Practice Tip #10

If your city is preparing or updating a general plan, housing element, utilities master plan, or major facilities expansion that might affect your city's SOI or service delivery operations, consider coordinating early on with the LAFCO executive officer to share data and analysis related to MSRs.

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.

A major benefit of MSRs to local agencies is the creation and maintenance by LAFCO of countywide data as it relates to the seven MSR determinations. For more information about MSRs, please refer to OPR's 2003 publication, *LAFCO Municipal Service Review Guidelines*.

Prezoning

A city must prezone unincorporated territory that the city expects to annex in the future, or present evidence satisfactory to LAFCO that the existing development entitlements on the territory are vested or are already at build-out and are consistent with the city's general plan. The proposed zoning must be consistent with the city general plan and a public hearing must be held. LAFCO may not, however, dictate the specific zoning to be applied by the city.

There are two advantages to prezoning. First, the city will have zoning in effect immediately upon annexation. Local residents will thereby have prior knowledge of the land use regulations that would affect them should annexation occur. Second, prezoning serves as notice to the LAFCO of the city's intentions regarding its adjacent areas. As such, upon annexation of the territory, the city is restricted for a period of two years after the annexation's effective date from amending the general plan designation and zoning for the territory that is a departure from the prezoning. This restriction may be waived if the city makes a finding at a public hearing that a substantial change has occurred in circumstances that necessitates a departure from the prezoning.

In order to be effective, the prezoning must be consistent with the city general plan. In at least one instance, the Appellate Court upheld a LAFCO's authority to deny an annexation where a city had prezoned a site agricultural, but where the "ultimate intended use" as represented on the general plan was residential and industrial. The conversion to agricultural land had conflicted with adopted LAFCO policy. (*City of Santa Clara v. LAFCO* (1983) 139 Cal. App.3d 923).

Environmental Review

Both case law and the CEQA Guidelines support the applicability of CEQA to annexations and to related SOI amendments. The environmental document should be prepared early in the process and should address all aspects of the project, not merely the annexation.

In 1975, the California Supreme Court held in a Ventura County case that annexations are to be considered projects under CEQA and are subject to environmental analysis. Where the LAFCO had “proceeded as if CEQA did not exist” its decision was enjoined until an EIR could be prepared. The Supreme Court drew similarities between the purposes of CEQA and the annexation laws then in effect, requiring that the LAFCO harmonize these purposes through the preparation of an EIR (*Bozung v. LAFCO* (1975) 13 Cal.3d 263).

The CEQA Guidelines define a project as the whole of an action, not the separate governmental actions that may be necessary to complete it. Ideally, a single environmental document will be prepared to address the annexation as well as all related general plan amendments, rezoning, SOI, or other proposals. The CEQA document should include an evaluation of the environmental effects from future development of the affected annexation territory based on what would be allowed under the existing or proposed general plan and zoning provisions. The document should address,

Best Practice Tip #11

If your project may directly or indirectly trigger the need for future LAFCO approval (e.g., annexations or SOI amendments), coordinate CEQA review early on with the LAFCO executive officer to ensure the CEQA document adequately addresses LAFCO’s requirements as a responsible agency. Future LAFCO actions should be clearly identified in the project description and list of approvals required by other agencies.

among other concerns, the policy issues raised in Sections 56301 and 56375. If the EIR identifies one or more significant environmental impacts and the annexation is approved, the LAFCO and the city will be responsible for making findings pursuant to Sections 15091 and 15093 of the CEQA Guidelines justifying their actions.

The courts have had differing opinions over the application of CEQA to SOI determinations. In *City of Livermore v. LAFCO* (1986) 183 Cal.App.3d 531, the court held that CEQA was invoked when the Alameda County LAFCO changed the guidelines it used for determining SOIs. However, the court in *City of Agoura Hills v. LAFCO* (1988) 198 Cal.App.3d 480 concluded that establishing an SOI was not automatically a project under CEQA. According to *Agoura Hills v. LAFCO*, the Court held that, “the fact that SOIs are recognized as important factors in annexations does not compel the conclusion that they are per se ‘projects’ subject to CEQA.” The Agoura court did not dismiss the possibility that under other circumstances, an SOI determination could be a project.

Environmental documents prepared for annexations should also address all related rezonings or general plan amendments (*Bozung v. LAFCO*, supra; *Pistoresi v. City of Madera* (1982) 138 Cal.App.3d 284). Conversely, when rezoning is proposed the environmental document should discuss the effects of annexation. For example, in *Rural Landowners Association v. City Council* (1983) 143 Cal.App.3d 1013, the court held that an EIR prepared for a rezoning and general plan amendment was insufficient because it failed to consider the issue of the related annexation that was then in progress. Amending the SOI may also be subject to CEQA if significant effects are possible (63 Ops.Cal.Atty.Gen. 758 (1980)). The city proposing an annexation must provide the LAFCO sufficient information to satisfy the environmental analysis requirements (*City of Santa Clara v. LAFCO*, supra).

When rezoning is proposed as part of an annexation request, the city is deemed the lead agency for CEQA purposes (Section 15051 of the CEQA Guidelines). As lead agency, the city will be responsible for preparing the necessary environmental document.

Local agencies, which can use categorical exemptions under the CEQA Guidelines for annexations, should use them carefully. If the annexation will result in extending utilities beyond the level required to serve existing development, the categorical exemption under CEQA Guidelines Section 15319 cannot be employed (*Pistoresi v. City of Madera*, supra; *City of Santa Clara v. LAFCO*, supra). Use of Section 15319 is limited to when: (1) development already exists at the density allowed by the current zoning or rezoning; (2) the utilities which may be required for the ultimate use will not serve more than the development in existence at the time of annexation; and (3) the annexation consists of individual small parcels of the minimum size for those facilities which are included in Section 15303 of the CEQA Guidelines.

Summary

This summarizes the preceding points:

1. General Plan Consistency

Annexations should be part of the community's comprehensive plan for the community's future. Annexation should occur in an orderly and logical manner, consistent with both the city general plan and with State mandates, regarding service delivery and the conservation of agricultural and open-space lands.

If the annexation area has not been included or addressed in the city general plan, then an amendment to the plan should be considered. When evaluating the proposal for consistency with the plan, special consideration should be given to the annexation's impacts on existing and planned public services, agricultural and open-space lands, city housing supplies for all economic levels, and the adopted SOI.

2. Sphere of Influence

If the area proposed for annexation lies outside of the city's SOI, then a request to amend the city's SOI must occur prior to or concurrent with filing the annexation request with the LAFCO. The SOI proposal should be addressed in the environmental document.

3. Environmental Analysis

The environmental document prepared for the annexation should be comprehensive in scope. That is, necessary rezoning and related applications should be evaluated as part of the project even though they may not be under consideration for some time. It should be possible to use a single environmental document to address the whole project, including any SOI amendments and/or annexations involving cities and/or special districts.

4. Rezoning

Prior to annexation, the site should be rezoned to be consistent with the city general plan. Rezoning hearings can alert the city to opposition or to issues of particular concern prior to the filing of an application with the LAFCO. The rezoning, general plan amendment (if necessary), and comprehensive environmental document should be completed before the annexation proposal is submitted to the LAFCO for consideration. When rezoning is involved, the city is the lead agency for purposes of CEQA.

5. LAFCO Application

When the city initiates an annexation, it should provide the LAFCO with as much information about the project as possible. This would include general plan, rezoning, environmental analysis data, and the plan for providing services. If the environmental document prepared for rezoning or general plan amendment proposal is comprehensive, the LAFCO should be able to use it for the annexation, thereby streamlining the process. Annexation proponents should meet with the LAFCO executive officer prior to filing an application, in order to review the LAFCO application requirements.

6. Public Review

The city should encourage public review and comment at every stage of the process. While the CKH Act provides opportunities for review at the LAFCO and city hearing levels, the general plan and rezoning procedures offer additional opportunities for input. Early public response is helpful in assessing public sentiment and identifying areas of concern.

City hearings should be coordinated if feasible. Addressing more than one topic at each hearing may clarify the intent and the ramifications of the overall project. Candidates for combined city hearings are: rezoning and general plan amendment; and rezoning, general plan, and resolution of application initiating proceedings. Ask the involved LAFCO whether it is possible to combine hearings.

At the same time, both city and LAFCO hearings can be educational. They offer an opportunity to explain annexation procedures and the responsibilities of the city and the LAFCO. For example, residents are sometimes confused about the implications of annexations to property taxes, or the ability of a city, under certain circumstances, to annex territory without an election (Section 56375(d)). When appropriate, invite the LAFCO executive officer to city hearings on annexations or related city actions to address frequently asked questions about the process or effects of annexations.

Conclusion

Both the city and the LAFCO have a responsibility to see that the proposed expansion of corporate limits complies with the procedures laid out in the CKH Act, adopted LAFCO policies, and the two State policies iterated at the beginning of this publication. It is important that the city and the LAFCO coordinate the annexation process through cooperation and mutual discussion. When considering the annexation proposal, both the city and the LAFCO should look beyond the immediate and examine the future impacts of the total project on city services, sources of tax revenue, historic growth trends, and neighboring communities and cities. LAFCOs can provide cities with a great deal of information about the annexation process and the enabling legislation.

Table of Cases Cited

Bozung v. LAFCO
(1975) 13 Cal.3d 263

Citizens of Goleta Valley v. Board of Supervisors of the County of Santa Barbara
(1990) 52 Cal.3d 553

City of Agoura Hills v. LAFCO
(1988) 198 Cal.App.3d 480

City of Livermore v. LAFCO
(1986) 183 Cal.App.3d 531

City of Santa Clara v. LAFCO
(1983) 139 Cal.App.3d 923

Ferrini v. City of San Luis Obispo
(1983) 150 Cal.App.3d 239

Friends of B Street v. City of Hayward
(1980) 106 Cal.App.3d 988

Greenwood Addition Homeowners Association v. City of San Marino
(1993) 14 Cal.App.4th 1360

Leshar Communications, Inc. v. City of Walnut Creek
(1990) 52 Cal.3d 531

L.I.F.E. v. Lodi
(1989) 213 Cal.App.3d 1139

Pistoresi v. City of Madera
(1982) 138 Cal.App.3d 284

Resource Defense Fund v. LAFCO
(1983) 138 Cal.App.3d 987

Rural Landowners Association v. City Council
(1983) 143 Cal.App.3d 1013

OPINIONS OF THE ATTORNEY GENERAL

60 Ops.Cal.Atty.Gen 118 (1977)

63 Ops.Cal.Atty.Gen 758 (1980)

71 Ops.Cal.Atty.Gen 344 (1988)

82 Ops.Cal.Atty.Gen. 180 (1999)

Annexation Process Flowchart

