

“LAFCO Litigation Looms”

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If they're not careful, LAFCOs will start losing lawsuits in less than a year.

Starting January 1, 2008, if a local agency formation commission (LAFCO) approves a boundary change --- an annexation to a city or special district --- without first revising the local agency's sphere of influence, the LAFCO risks being sued and probably losing. If a builder needs that annexation to get access to public facilities to serve a proposed project, then the opponents can easily attack the development. To avoid exposing boundary decisions and development projects to lawsuits that will probably succeed, LAFCOs need to meet the January 1, 2008 deadline for revising their spheres of influence.

Although I am not a lawyer, I am convinced that a plain reading of the Cortese-Knox-Hertzberg Local Government Reorganization Act (Government Code §56000, et seq.) warns LAFCOs about the consequences of missing this impending deadline.

LAFCOs must adopt spheres of influence for the cities and special districts in their counties (§56425 [a]). Spheres of influence are LAFCOs' plans that show cities and districts' future service areas and boundaries (§56076). LAFCOs must revise their spheres every five years (§56425 [g]). Because that requirement took effect on January 1, 2001, the first deadline would have been January 1, 2006 (AB 2838, Hertzberg, 2000). When legislators learned that many LAFCOs would miss that deadline, they granted a two-year extension (AB 1746, Assembly Local Government Committee, 2005). The new deadline for LAFCOs to revise and amend their spheres is January 1, 2008 (§56425 [g]).

Almost 25 years ago, an appeals court explained that a LAFCO can't approve a boundary decision if it failed to adopt the required sphere of influence (*Resource Defense Fund v. Local Agency Formation Com.* [1983] 138 Cal.App.3d 987).

Future courts will look at the land use statutes when deciding LAFCO cases because many features of the Cortese-Knox-Hertzberg Act are similar to the Planning and Zoning Law (§65000, et seq.). For example, LAFCOs' boundary decisions must be consistent with their spheres of influence (§56375.5). This requirement parallels the “vertical consistency” rule which requires local subdivision decisions to be consistent with county and city general plans (§66473.5).

Counties and cities can't approve subdivisions if their general plans are incomplete (*Save El Toro Ass'n v. Days* [1977] 74 Cal.App.3d 64) or inadequate (*Camp v. Board of Supervisors* [1981] 123 Cal.App.3d 334). Local officials have an implied duty to keep their general plans up-to-date (*De Vita v. County of Napa* [1995] 9 Cal.4th 763).

An outdated sphere of influence is like an outdated general plan. An outdated sphere of influence does not provide an adequate legal basis for making the statutorily required vertical consistency finding. Starting January 1, 2008, if a LAFCO approves a city annexation, a special district consolidation, or any other boundary change without first revising the underlying spheres of influence, then the LAFCO risks being sued and losing the case.

Consider this hypothetical situation. A developer wants to build the 120-unit Salmon Creek Estates subdivision on 20 acres of a former ranch in an unincorporated area in Klamath County. Despite complaints from the Friends of Salmon Creek, the Klamath County Board of Supervisors approves the proposed subdivision. The property is already in the Happy Valley Irrigation District and the Happy Valley Fire Protection District, but it's not part of the Klamath County Sanitation District No. 2. Knowing that the subdivision needs sewer service, the county supervisors impose a condition on the tentative map that requires annexing the 20 acres to the Sanitation District. The developer applies to the Klamath County LAFCO which approves the annexation, even though the LAFCO has not updated the Sanitation District's sphere of influence since it originally adopted the document back in 1985. The Friends of Salmon Creek sue, charging that the LAFCO violated Government Code §56375.5. The annexation can't be consistent with the District's sphere of influence, they argue, because the LAFCO didn't update the District's sphere by the statutory deadline of January 1, 2008. A decision can't be consistent with something that doesn't exist. The Klamath County Superior Court judge agrees with the Friend of Salmon Creek and she invalidates LAFCO's decision. The subdivision grinds to a halt because the Klamath County LAFCO missed its deadline.

If they're not careful, LAFCOs that miss the impending deadline are about to start losing lawsuits.

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