



LAFCO - San Luis Obispo - Local Agency Formation Commission  
SLO LAFCO - Serving the Area of San Luis Obispo County

**TO: MEMBERS, FORMATION COMMISSION**

**FROM: DAVID CHURCH, EXECUTIVE OFFICER (DC)**

**DATE: AUGUST 17, 2017**

**SUBJECT: Information Items: Conflicts of Interest  
Disadvantaged Unincorporated Communities**

**Recommendation.** It is respectfully recommended that the Commission review and discuss the information in this report and provide feedback to Staff regarding any of the topics.

### Conflicts of Interest

There are numerous laws under which a conflict of interest can be determined. While the specific circumstances might lead one to believe they have a legal conflict of interest, the perception of a conflict can be as damaging to a government agency, individual, elected official or an approval process. The Cortese-Knox-Hertzberg Act specifically allows a Commissioner to vote on a proposal from their jurisdiction, even if that Commissioner has previously voted on the proposal. CKH calls for a Commissioner's independent judgement:

*56325.1. While serving on the commission, all commission members shall exercise their independent judgment on behalf of the interests of residents, property owners, and the public as a whole in furthering the purposes of this division. Any member appointed on behalf of local governments shall represent the interests of the public as a whole and not solely the interests of the appointing authority. This section does not require the abstention of any member on any matter, nor does it create a right of action in any person.*

That said, a Commissioner could still become entangled in the Conflict of Interest laws of California. LAFCO counsel does not advise individual Commissioners regarding a conflict of interest, but will opine on the possible impacts a conflict could have on LAFCO. This is an important distinction as it is the responsibility of individual Commissioners to identify and take action with regard to a Conflict of Interest that they may have with a particular proposal. Below is a listing to the various Conflict of Interest Laws in California. The source of this guide is the California Attorney General's Office. It is designed to help an elected official work through Conflict of Interest questions.

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## **Issue Spotter-California Attorney General's Office COI Guide**

### **Financial Conflict of Interest Political Reform Act Gov. Code, § 87100 et seq.**

- Is a state or local official participating in a government decision?
- Does the decision affect an interest in real property or an investment of \$2,000 or more held by the official? Or a source of income to the official of \$500 or more? Or gifts to the official of \$420 or more?
- If so, is there a reasonable possibility that the decision will affect significantly any of the economic interests (e.g., real property, business entities, or sources of income or gifts) involved?
- Are the official's economic interests affected differently than those of the general public or a significant segment of the public?

If the answer to these questions is yes, the official may have a conflict of interest and be required to disqualify from all participation in that decision. (See Ch. I.)

### **Financial Interests in Contracts Gov. Code, § 1090 et seq.**

- Does a board member have a direct or indirect financial interest in a contract being made either by the board or by any agency under the board's jurisdiction?

If so, and the contract is made, the member may be subject to criminal sanctions and the contract may be void and any private gain received by the official under the contract may have to be returned.

Board members may not avoid the conflict by abstaining from participation in the decision absent a special exception.

- Does any other state or local officer or employee have a direct or indirect financial interest in the contract?

If so, the official is required to avoid any participation in the making of the contract. Failure to completely disqualify may subject the official to criminal sanctions and the contract may be void and any private gain received by the official under the contract may have to be returned. (See Ch. VII.)

### **Limitations on State Contracts Pub. Contract Code, § 10410**

- Is a state official (other than a part-time board member) involved in an activity, employment or enterprise, some portion of which is funded by a state contract?

- Is a state official, while employed by the state, contracting with a state agency to provide goods or services as an independent contractor?

If the answer to either of these questions is yes, a prohibited activity may have occurred. (See Ch. VIII.)

### **Conflict of Interest Resulting from Campaign Contributions Gov. Code, § 84308**

- Is there a proceeding involving a license, permit or entitlement for use?
- Is the proceeding being conducted by a board or commission?
- Were the board members appointed, rather than elected, to office?
- Has any board member received campaign contributions of more than \$250 from the applicant or any other person who would be affected by the decision: (1) during the proceeding; (2) within the previous 12 months prior to the proceeding; (3) within 3 months following a final decision in the proceeding?

If the answer to any of these questions is yes, the board member may have to disqualify himself or herself from participating in the decision. (See Ch. IV.)

### **Appearance of Financial Conflict of Interest Common Law**

Court-made law, based on avoiding actual impropriety or the appearance of impropriety in the conduct of government affairs, may require government officials to disqualify themselves from participating in decisions in which there is an appearance of a financial conflict of interest. (See Ch. XIII.)

### **Receipt of Direct Monetary Gain or Loss Gov. Code, § 8920**

- Will a state officer, not an employee, receive a direct monetary gain or loss as a result of official action?

If an officer expects to derive a direct monetary gain or suffer a direct monetary loss by reason of his or her official activity, the officer should disqualify himself or herself from the decision.

However, a conflict does not exist if an officer accrues no greater benefit or detriment as a member of a business, profession, occupation or group than any other member. (See Ch. XIV.)

### **Public Reporting of Financial Interests Political Reform Act Gov. Code, §§ 87200-87313**

- Is the official a state or local officer or employee who participates in the making of government decisions?

If so, the official may be required to file a public report disclosing investments, real property, income and gifts. (See Ch. II and Ch. III)

**Incompatible Activities Gov. Code, § 1125 et seq. (local officials); Gov. Code, § 19990 (state officials)**

- Is an official using his or her government position or government information, property, or resources for other than an official purpose?
- Has the official's agency or appointing authority adopted an incompatible activities statement?

If the activity has been prohibited by an incompatible activities statement, the official can be ordered to stop the practice and may be disciplined. (See Ch. X regarding local officials, and Ch. XI regarding state officials.)

**Incompatible Offices Gov. Code, § 1099 codifying the Common Law prohibition**

- Does a single official hold two offices simultaneously? (This doctrine applies only to public "officers" as opposed to "employees.")
- Do the offices overlap in jurisdiction, such that the official's loyalty would be divided between the two offices?

If the answer to each of these questions is yes, the holding of the two offices may be incompatible and the first assumed office may have been forfeited by operation of law. (See Ch. XII.)

**Transportation, Gifts or Discounts Cal. Const., art. XII, § 7**

- Has a state or local officer, not an employee, received a gift or discount in the price of transportation from a transportation company? (The prohibition covers inter and intrastate transportation in connection with both governmental or personal business.)

If the answer to this question is yes, the officer may have forfeited his or her office. (See Ch. IX.)

**Former State Officials and Their Contracts Pub. Contract Code, § 10411**

- Is a former state official contracting with his or her former agency to provide goods and services?

If the answer to this question is yes, a prohibited activity may have occurred. (See Ch. VIII, sec. C.)

## **Disadvantaged Unincorporated Communities (DUCs)**

**Summary.** Senate Bill 244 (Wolk, 2011) became law in January 2012. It requires cities and counties to address the infrastructure needs of disadvantaged unincorporated communities (DUC) in city and county general plans and LAFCO Sphere of Influence (SOI), Municipal Service Reviews (MSRs) and annexation decisions. For LAFCo's SB 244 contains provisions that require the identification of disadvantaged communities within the existing SOIs of cities and special districts that provide public facilities or services related to sewers, municipal and industrial water, or structural fire protection. SB 244 states that it is the intent of the Legislature to encourage investment in these communities and address the complex legal, financial, and political barriers that contribute to regional inequity and infrastructure deficits within disadvantaged unincorporated communities. In other words if a jurisdiction is serving other more affluent areas, it should also provide services to a DUC that is in the area.

A disadvantaged unincorporated community is defined as an inhabited area (containing 12 or more registered voters) comprised of 10 or more dwellings in which the median household income is 80% or less of the statewide annual median household income. According to the U.S. Census Bureau, the 2015 statewide annual median household income for California was \$61,818. A qualifying disadvantaged unincorporated community (80% of median income) would have a corresponding annual median household income of \$49,454 or less, and be comprised of 10 or more dwellings in which 12 or more registered voters reside.

For LAFCo's, SB 244 prohibits approval of city/special district annexations greater than 10 acres that are contiguous to a disadvantaged unincorporated community unless the city also applies to annex the disadvantaged unincorporated community as well. To date, DUCs that have been identified in SLO County are within the boundaries of the cities and special districts, thus these areas are served. The law exempts the requirement to submit an application to annex a contiguous disadvantaged community if either of the following applies:

- This requirement is not applicable if an application to annex the disadvantaged unincorporated community had been made during the prior five years or if a majority of residents in that community are opposed to the annexation. A prior application for annexation of the same disadvantaged community has been made in the preceding five years; or,
- LAFCO finds, based upon written evidence, that a majority of the residents within the affected territory are opposed to annexation.

### **LAFCO Requirements**

After July 1, 2012, LAFCOs must consider the present and future need for public facilities and services by disadvantaged unincorporated communities for any city or district updating their SOI and which provides public sewer, municipal and industrial water, or structural fire protection facilities or services. LAFCOs are required to make written determinations regarding disadvantaged unincorporated communities within a

city or districts' SOI and in the Municipal Services Review. To date, no DUCs have been identified within a jurisdiction's SOI in San Luis Obispo County. While some communities are identified as DUCs (San Miguel, Oceano) these are all served by the jurisdiction. These are not San Luis Obispo LAFCO Policy regarding DUCs is to implement what is currently in the State law.

In its consideration of proposed city annexations, SB 244 requires LAFCO to disapprove an annexation to a city of any territory greater than 10 acres (or as determined by commission policy) where an identified disadvantaged unincorporated community exists that is contiguous to the area of proposed annexation, unless an application to annex the disadvantaged unincorporated community to the subject jurisdiction has been filed with the executive officer.

When preparing a municipal service review, SB 244 required LAFCO to include an additional written determination regarding the location and characteristics of any Disadvantaged Unincorporated Communities (DUCs) within or contiguous to the subject sphere of influence. SLO LAFCO completes this task with each SOI/MSR update. SB 244 also authorizes LAFCO to assess alternatives for improving efficiency and affordability of infrastructure and service delivery within and contiguous to the sphere of influence, including, but not limited to, the consolidation of governmental agencies.

### **Cities/County Requirements**

SB 244 also requires a city or county to review and update the land use element of its general plan, on or before the next adoption of its housing element, to include an analysis of the presence of island, fringe, or legacy unincorporated communities (as defined). SB 244 defines these communities as follows:

- “Disadvantaged unincorporated community” means a fringe, island, or legacy community in which the median household income is 80 percent or less than the statewide annual median household income.
- “Unincorporated fringe community” means any inhabited and unincorporated territory that is within a city’s sphere of influence.
- “Unincorporated island community” means any inhabited and unincorporated territory that is surrounded or substantially surrounded by one or more cities or by one or more cities and a county boundary or the Pacific Ocean.
- “Unincorporated legacy community” means a geographically isolated community that is inhabited and has existed for at least 50 years.

In 2014, the County completed a General Plan Amendment that identified Oceano, San Miguel, and Shandon as disadvantaged unincorporated communities. County Planning Staff analyzed San Luis Obispo County parcel data, 2010 Census Block Groups income data, and 2010 Designated Places and Census Blocks population data in order to identify three unincorporated communities to which SB 244 applies.

The County Public Works also identified disadvantaged communities (DAC-includes incorporated Cities) in its grant submittal to the State Department of Water Resources (DWR). DWR maps disadvantage incorporated and unincorporated communities. San Simeon CSD and surprising the City of San Luis Obispo were added to the Public Works list of DACs. LAFCO uses this information in preparing the Sphere of Influences and Municipal Service Reviews for these communities. All of the DUCs/DACs identified to date are within the boundaries of the Cities, Community Services District and/or the County Service Areas. No DUCs have been identified in a jurisdiction's Sphere of Influence which has been recently updated by LAFCO. SLO LAFCO will continue to evaluate this issue as part the SOI/MSR Update process.