LOCAL AGENCY FORMATION COMISSION
SEPTEMBER 28, 2005

EL DORADO LAFCO
LOCAL AGENCY FORMATION COMMISSION

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AGENDA
September 28, 2005 - 5:30 P.M.

El Dorado County Hearing Rm. 2850 Fairlane Court, Bldg. C., Placerville, California

Time limits are three minutes for speakers. Speakers should complete a "Request to Speak Form." If you need a disability- related accommodation to participate in this meeting, contact LAFCO staff at least two days prior to the meeting.

1. CALL TO ORDER AND ROLL CALL

2. CONSENT CALENDAR

A. ADOPTION OF AGENDA
B. MINUTES OF THE MEETING OF AUGUST 24, 2005
C. APPROVAL OF CLAIMS

3. PUBLIC FORUM/PUBLIC COMMENT

Members of the public may address the Commission concerning matters within the jurisdiction of LAFCO which are not listed on the agenda. No action may be taken on these matters.

4. STUDY SESSION - HOUSING AND HOUSING ELEMENTS

A. A representative from the Sacramento Area Council of Governments will discuss housing issues and describe the regional housing allocation process.

B. Representatives from El Dorado County and Cities of Placerville and South Lake Tahoe will provide background and descriptive information to the commission regarding their respective housing elements with an emphasis on housing policies.

5. OTHER BUSINESS

A. LEGISLATION - Report of the legislative session. The commission may authorize support or opposition to pending bills.

B. COMMISSIONER ANNOUNCEMENTS

C. COUNSEL REPORT

D. EXECUTIVE OFFICER REPORT

5. *ADJOURNMENT*

The next regularly scheduled LAFCO Commission meeting will be October 26, 2005.

Respectfully submitted,

Roseanne Chamberlain
Executive Officer

All persons are invited to testify and submit written comments to the Commission. If you challenge a LAFCO action in court you may be limited to issues raised at the public hearing or submitted as written comments prior to the close of the public hearing. All written materials received by staff 24 hours before the hearing will be distributed to the Commission. If you wish to submit written material at the hearing, please supply 15 copies.

NOTE: State law requires that a participant in a LAFCO proceeding who has a financial interest in the decision and who has made a campaign contribution of more than $250 to any Commissioner in the past year must disclose the contribution. If you are affected, please notify commission staff before the hearing.

s:\shared\susan\agendas\05September28 Agenda

AGENDA ITEM NO. 2
CONSENT CALENDAR

STATE OF CALIFORNIA, COUNTY OF EL DORADO

LOCAL AGENCY FORMATION COMMISSION MINUTES OF AUGUST 24, 2005

1. **CALL TO ORDER AND ROLL CALL**

The meeting of the Local Agency Formation Commission held on August 24, 2005, was called to order at 5:31 p.m. by Chair Manard in the meeting room, Building C of the Government Center, 2850 Fair Lane, Placerville, California.

COMMISSIONERS - PRESENT
Roberta Colvin, City
Ted Long, City
Richard C. Paine, County
Rusty Dupray, County
Aldon Manard, Public
Gary Costamagna, District
Nancy Allen, District

COMMISSIONERS - ABSENT

ALTERNATE COMMISSIONERS - PRESENT
Carl Hagen, City
Francesca Loftis, Public

ALTERNATE COMMISSIONERS - ABSENT
George Wheeldon, District
James R. Sweeney, County

COMMISSION STAFF - PRESENT
Roseanne Chamberlain, Executive Officer
Thomas Gibson, LAFCO Counsel
Wendy Cortade, Acting Clerk

COMMISSION STAFF - ABSENT
Susan Stahmann, Clerk to the Commission

ROLL CALL - VOTING MEMBERS: Dupray, Paine, Costamagna, Allen, Colvin, Long, Manard

2. **CONSENT CALENDAR**

A. ADOPTION OF AGENDA

B. DISPOSITION OF MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION

Minutes of the Meeting of April 18, 2005
Minutes of the Meeting of May 18, 2005
Minutes of the Meeting of June 1, 2005
Minutes of the Meeting of June 8, 2005
Minutes of the Meeting of June 22, 2005
Minutes of the Meeting of July 11, 2005
Minutes of the Meeting of July 27, 2005

C. APPROVAL OF CLAIMS

Commissioner Paine suggested adding items 4 and 5 to the consent calendar. Staff requested separate motions on these items. Commissioner Long noted a correction needed on page 2 of the June 8th minutes, to show Dupray making the motion to approve the incorporation, with Long as the second of that motion. Commissioner Allen requested clarification of an amount listed in the minutes. Commissioners confirmed that the amount was correct.

MOTION

Long moved adoption of the consent calendar with the correction as noted; second Allen.

ACTION

The motion was supported unanimously (voice vote).

3. **PUBLIC FORUM/PUBLIC COMMENT**

Chair Manard opened the public forum. No one spoke.

4. **FEE WAIVER REQUEST: FORNI ROAD RIGHT-OF-WAY REORGANIZATION, LAFCO PROJECT 05-11**

The Executive Officer reviewed the staff report and recommendation to waive fees.

Steve Calfee, Commmunity Development Director, City of Placerville, explained the project and affirmed the need for the fee waiver.

The chair closed the public hearing.

MOTION

Paine moved to adopt the fee waiver as recommended; second by Dupray.

The Executive Officer explained the fee amount.

ACTION

The motion was support unanimously.

5. **EXTENSION OF TIME TO COMPLETE PROCEEDINGS: GREEN SPRINGS RANCH REORGANIZATION, LAFCO PROJECT 98-12**

The Executive Officer explained the provisions of statute requiring extensions and EID's process and the time typically needed to secure the USBR approval for change of the place of use for annexations. She noted that the extensions are usually grouped on the November agenda. The Commission discussed the extension.

There was no public comment.

MOTION

Costamagna moved approval of the staff recommendations; second by Long.

ACTION

The motion was supported unanimously (roll call).

6. **REPORT AND RECOMMENDATIONS OF THE AD HOC PERSONNEL COMMITTEE (SUCCESSION/REPLACEMENT)**

The Executive Officer explained the Committee's process and stated her resignation, effective January 31, 2006, She outlined the hiring process in the staff report.

Chair Manard explained the request for recruitment funding. Commissioner Dupray explained the offer from Scott Finley (former Placer Executive Officer) to assist the committee. The Executive Officer noted the opportunity for Commissioners to recruit at the upcoming CALAFCO conference. There was discussion about setting an application deadline. There was consensus for September 30 as the application deadline.

MOTION

Long moved to accept the Executive Officer's resignation, direct the Personnel Costamagna moved approval of the staff recommendations; second by Long.

In response to Commission discussion, the Executive Officer explained that her written resignation would be revised at the request of the Committee, noting her expectation of the prompt hiring of the new executive and of receiving the step raise and cola that are already in the budget.

ACTION

The motion was supported unanimously (roll call).

7. **ELECTION OF DIRECTORS TO THE SPECIAL DISTRICT RISK MANAGEMENT AUTHORITY**

The Commission discussed the candidates.

There was no public comment.

MOTION

Colvin moved to adopt the resolution with the candidates as discussed. Second by Paine.

ACTION

The motion was supported unanimously (roll call).

8. OTHER BUSINESS

A. LEGISLATION *(No report at this time)*

B. COMMISSIONER ANNOUNCEMENTS

Chair Manard asked and the Executive officer explained about the EID meeting noted in the Executive Officer's report regarding a "mass annexation" of lands within community regions. She reviewed her recommendations to EID. She noted that it may take some time for EID to define the project.

C. COUNSEL REPORT

Tom Gibson announced the dinner invitation for conference attendees.

D. EXECUTIVE OFFICER REPORT

Ms. Chamberlain asked if any Commissioners would want to attend the conference to substitute for Robby Colvin. She reviewed the project status report briefly. In response to Commissioner Allen she explained the difficulty completing the service review.

9. ADJOURNMENT

Chair Manard adjourned the meeting at 6:05 p.m.
The next regularly scheduled LAFCO meeting will be September 28, 2005.

APPROVED BY THE COMMISSION
AUTHENTICATED AND CERTIFIED

Executive Officer **Chairperson**

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LAFCO
APPROVAL OF CLAIMS
August 14 through September 21, 2005

	Memo	Amount
Aldon Manard		
	Stipend/Mileage 8/24/05 LAFCO Mtg.	-64.63
BCNS		
	Computer Support September 2005	-270.00
Caltronics Business Systems-Philadelphia		
	Copier Maintenence	-97.12
	Copier Maintenence	-102.87
Carl Hagen		
	Stipend/Mileage 8/24/05 LAFCO Mtg.	-50.00
Cingular Wireless		
	Cell Phone 7/18/05-08/17/05	-28.49
El Dorado County- Information Technologie		
	Web Development and Maitenance	-105.00
	El Dorado County Phone Charges Cust#861100	-2.53
Francesca Loftis		
	Stipend/Mileage 8/24/05 LAFCO Mtg.	-61.25
Gary Costamagna		
	Stipend/Mileage 8/24/05 LAFCO Mtgs.	-64.63
Lamphier Gregory		
	El Dorado Hills Incorporation Project	-3,668.41
Nancy Allen		
	Stipend/Mileage 8/24/05 LAFCO Mtg.	-66.88
Roberta Colvin		
	Stipend 8/24/05/05 LAFCO Mtgs.	-50.00
Roseanne Chamberlain		
	Mileage/ Meal Reimbursement 3/5/05-6/30/05	-207.05
SBC		
	530-295-2707-693	-149.00
	530-626-7256-880	-58.52
	530-295-1208-294	-14.71
Scott Browne		
	Incorporation Legal Counsel to 8/15/05	-1,725.00
State Board of Equalization		
	SBE Fees LAFCO Project 04-12	-350.00
Ted Long		

LAFCO
APPROVAL OF CLAIMS
August 14 through September 21, 2005

	Memo	Amount
	Stipend/Mileage 8/24/05 LAFCO Mtg.	-101.75
Walker's Business Products		
	Office Supplies	-51.88
Wendy Courtade		
	Mileage Reimbursement 6/9/05-8/26/05	-17.50

Approved

Date: _____

Chairman: _____

Attest: _____

AGENDA ITEM NO. 4

STUDY SESSION - HOUSING AND HOUSING ELEMENTS

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MEMO

DATE: September 20, 2005

TO: Commissioners and Alternates

FROM: Roseanne Chamberlain, LAFCO Executive Officer

SUBJECT: Study Session – Housing and Housing Elements; Agenda of Sept. 28, 2005

LAFCO law addresses housing in two sections. The most important reference is at Government Code Section 56668(l) requiring LAFCO to review the extent to which a proposal (i.e. annexation) will affect a city or cities and the county in achieving their respective fair shares of the regional housing needs. This session will review the cities' and the County's Housing Elements and housing policies to will enhance the analysis of proposals under Government Code Section 56668(l). Materials for this agenda item include CD Rom copies of the County and City of Placerville Housing Elements. South Lake Tahoe's housing element was not provided in time for mailing with the packet. An article from the Business Alliance newsletter highlights the current public interest in housing issues.

As an example of LAFCO's potential role in annexations related to housing, a hypothetical city could request annexation of land pre-zoned by the city commercial uses. If this land is planned the County for housing, LAFCO would be empowered determine if the annexation would reduce the County's ability to achieve its share of housing and the Commission could theoretically deny the annexation on this basis. As another example, city that is fully built out might need to annex land to accommodate the affordable units it needs to provide. In that case LAFCO could potentially determine that the annexation should be approved on that basis that it was needed to ensure the city was able to achieve it housing goals.

LAFCO responsibility to consider the effect of annexations on housing was added to §56668 in 2000. Amendments were also made to Section 56001 which states LAFCO's role in promoting orderly development, discouraging urban sprawl, preserving open space and agricultural lands and efficiently extending government services. The language adds a LAFCO purpose. "The Legislature also recognizes that providing housing for persons and families of all incomes is an important factor in promoting orderly development."

The Business Alliance.....Update

August 1, 2005

P.O. Box 121, Shingle Springs, CA 95682 *"Developing Mutual Support on Community-Wide Issues"*

The *Business Alliance...Update* is a bi-monthly publication of the El Dorado Business Alliance (BA). The BA is made up of the following organizations: Building Industry Association of Superior California (BIASC), El Dorado Builders' Exchange, El Dorado County Association of Realtors (EDCAR), El Dorado County Joint Chambers Commission, El Dorado Forum, and Surveyors, Architects, Geologists and Engineers (SAGE) Web Address for Subscription Info: KathyeRussell@sbcglobal.net

The El Dorado Business Alliance (BA) is pleased to note the county is moving forward in filling some key staff positions. Peter Mauer , longtime county resident and a Senior Planner with the county has been named to head Planning Services. Peter has been very involved in the general plan process for years and has obtained historical knowledge that is lacking, but important, in planners from outside El Dorado County.

SMUD Agreement Close

It appears that El Dorado County and SMUD are close to agreement on the terms of negotiations over SMUD's re-licensing of the Upper American River Project (UARP).

SMUD ran up against local opposition when their proposal to license the project for another 50 years failed to offer El Dorado County (EDC) sufficient mitigations to offset their use of this area's prime location for power production. SMUD has also been reluctant to recognize any *equitable* sharing of project benefits with EDC under the new license. The UARP has brought many benefits to Sacramento County residents but few to El Dorado County. Several other issues, as set forth by EDC's Citizens for Water (CFW), include:

~ SMUD has failed to acknowledge EDC's county-of-origin water rights as per State Water Resources Control Board direction in their Decision #893.

~ SMUD has insisted that El Dorado County pay for power-foregone, but **this is water for which El Dorado County has a first right to use**. Still SMUD has insisted on a costly, deal breaking, power-foregone arrangement on our own water.

~ SMUD has failed to assist El Dorado County with information on the City of Sacramento's water rights from the UARP. SMUD originally signed over those rights to the City of Sacramento years ago without prior notice to El Dorado County.

~ SMUD has, to date, refused to reveal their calculations for the cost of power foregone for which they are asking this area to pay. This makes it impossible for El Dorado County to fully evaluate costs for any project.

~ The UARP has paid for itself many times over and the Sacramento area will have reaped over $3 billion in hydro-electric benefits from the UARP. Yet SMUD has been unwilling to share the benefits they have reaped off of the UARP which is located solely in El Dorado County.

~ SMUD refused to produce a realistic socioeconomic study for El Dorado County and the UARP. Originally SMUD studied the *recreational* effects of UARP while ignoring the economic impacts in total.

~ SMUD is insisting on including the controversial Iowa Hill Project in the new UARP application - *prior to completing adequate studies.*

Now we learn that SMUD, while in the midst of negotiating sessions with El Dorado County (and after reportedly using an estimated 200,000 *additional* acre feet of water this year over what the UARP license permits) has filed for more water rights without notifying EDC. To be actively negotiating with our county and then secretly file for new water rights smacks of deceitfulness on SMUD's part and serves to fuel the already burning fires of distrust between El Dorado County residents and SMUD.

Fortunately El Dorado County has had a strong negotiating team working to correct these and past injustices. The team is aware of this history and its impacts to current residents throughout the county. The Business Alliance appreciates the time and effort put forth negotiating with SMUD and looks forward to learning of the conditions of the new agreement.

A word of caution: ***We urge the EDC negotiating team to obtain a signed agreement of offer from SMUD prior to accepting any terms SMUD proposes.*** *El Dorado County must be cautious in accepting any agreement on water, especially one that will be in force for the next 50 years.*

Affordable Housing Still Unresolved ←

Several Business Alliance member organizations have been fighting for more affordable housing units in this area for years. It's a tough battle with no obvious workable solutions in sight. Recently affordable housing issues surfaced in two ways worth noting as they have yet to be resolved. First, EDCs General Plan and Housing Element must be approved by Housing & Community Development (HCD) as supplying sites suitable for its "fair share" of affordable housing units and must include efforts to expand infrastructure and facilitate housing for lower income households. HCD states, *"The Housing Element shall also contain programs which address, where appropriate and legally possible remove, governmental*

constraints..." El Dorado County (EDC) must also recognize cost impacts that Measure Y can have on housing. Subsequently HCD has not yet blessed El Dorado County's 2004 General Plan Housing Element.

Second, a proposal was submitted by representatives of the Measure Y Committee to DOT's Community Action Committee (CAC) and county supervisors earlier this year, suggesting that DOT recommend that Federal and State grants for road improvements be used to subsidize affordable housing. The proposal was quickly labeled infeasible by many CAC members because it was believed to be impossible to establish a legal nexus between the two. However at least one staff attorney believes a nexus can be proven and DOT staff is expected to bring the issue to supervisors for consideration.

El Dorado is not the only area struggling to meet affordable housing needs and projections. In Sacramento the City Council is facing challenges to a controversial law that mandates that 15% of new housing units be priced for low- and very-low income families, with the affordable units to be spread evenly throughout a development. JTS Homes is now seeking an exemption and proposes to move 58 affordable units to another area. But local residents from both areas are complaining and do not want the affordable units in their neighborhoods. Based on Sacramento's annual median income for a family of four (about $59,800), low-income households earn up to $47,840 annually and very low-income earners make up to $29,900. The City law was passed in 2000 in an attempt to meet state-mandated affordable housing goals and to *"promote economic and social integration"*.

Developers often oppose "inclusionary housing" policies for good reason: They drive up the cost of standard housing units so that middle-income home buyers are financing the affordable housing. During El Dorado County's general plan development process some planners and members of the public sought to include inclusionary housing policies in the general plan, however there is little evidence to support the success of such policies. According to Tim Coyle, Senior Vice President of the California Building Industry Association, *"In the Bay Area, people who bought market rate homes paid $30,000 more in cities with policies calling for 15% of homes to be subsidized."* Coyle sees inclusionary zoning as symbolic of government's failure to serve the poor. And a 2004 report from the Reason Foundation also concluded that inclusionary Zoning policies have not produced the housing units for which the policy was intended.

Locally mid-level earners are also priced out of the housing market, even without the additional subsidization burdens. El Dorado County Sheriff Jeff Neves is seeking supervisors' support to increase the salary level of department employees, citing the high cost of local housing as one detriment to hiring high quality applicants.

Rents Up – Rentals Down

The Sacramento region's average apartment rent remained at $916 per month in the second quarter of 2005, but vacancies fell and rents are projected to increase if trends continue. Approximately 35% of this region's households rent compared to about 40% statewide and about 30% nationwide. Rent increases are the result of several factors, but primarily attributed to a strong job market. New jobs fuel the demand for rentals and so the big question is - what is going to happen with new employment in this region?

Other forces affecting the apartment rental market are increases in the conversion rate of apartments to condominiums. A few years back virtually no condos were being built in the region, but rising prices for detached homes have increased demand for affordable condos. In the Sacramento region a greater portion of the land zoned for multi-family dwellings is now being used for condos for sale, rather than apartments for rent.

A high equity appreciation rate in the Sacramento market is also affecting apartment rents and condo conversions. More and more investors are taking advantage of high equity accrual in single family homes and are cashing out. These former rentals tend to be at the lower end of the market and they've been selling like hotcakes in El Dorado County. Upon their sale at higher prices they no longer work financially for investors in the rental market and are often converted to owner occupied. Equity sells have contributed to a reduction in the amount of rental units available regionally and are creating an even higher demand for rental units. There's also a psychology at work that influences the market. Currently many fear the market has peaked and interest rates will soon increase. Others fear they are missing the window of availability to purchase their first home.

Larger Farm Districts Urged

Several members of the agricultural community are continuing to seek the inclusion of additional land into agricultural districts. The mapping process to identify those additional lands is almost complete. Project leaders hope to submit a final proposal to the county's Planning Services division by the end of 2005. Under consideration are an additional 30,000 acres of land outside of the county's current ag districts which number about 50,000 acres. The effort is being led by Camino grower Doug Leisz and Bill Frost, Director of the UC Cooperative Extension.

The goal of the project is to protect acreage that has been designated as choice soils for crops to further promote agricultural activities in El Dorado County. The project has the endorsement of the EDC Chamber of Commerce's Agricultural Council. The Council plans to continue to work to bring their program to fruition. Currently nearly 50,000 acres are included in six agricultural districts in Gold Hill, Oak Hill, Garden Valley, Camino-Fruitridge, Pleasant Valley and Fairplay-Sommerset. The additional lands are in the Garden Valley, Camino-Fruitridge and Fairplay-Sommerset areas.

Leisz and Frost have already begun holding meetings with community groups to further explain the project and to seek support. Water is also a critical factor in planning for new agriculture as are commercial centers. According to Leisz, *"Commercial centers are (also) needed in rural areas to serve tourists that are key to supporting the small agricultural enterprises that characterize this area"*.

City of South Lake Tahoe Housing Element Update

Deemed Compliant by HCD 12-2003

Summary for LAFCO
September 28, 2005

Status of Meeting the City's Share of SACOG's Regional Housing Needs

	New Construction Objective	Rehabilitation Objective	Total to Date
Very low-Income	28	--	18
Low-Income	36	40	92
Moderate-Income	30	10	8
Above-Moderate	204	--	205

Housing Rehabilitation Program

Housing Rehabilitation Loans

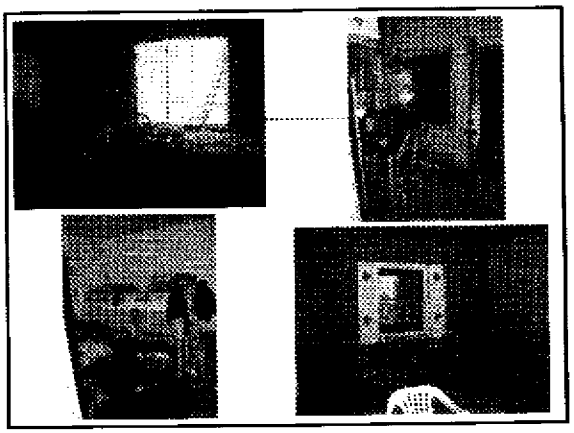
- Awarded $3 Million in Grants
- Loans of $2.5 Million
- 50 Recipients Since 1995
- $457,000 in Loan Repayments
- Loan Portfolio Over $1 Million

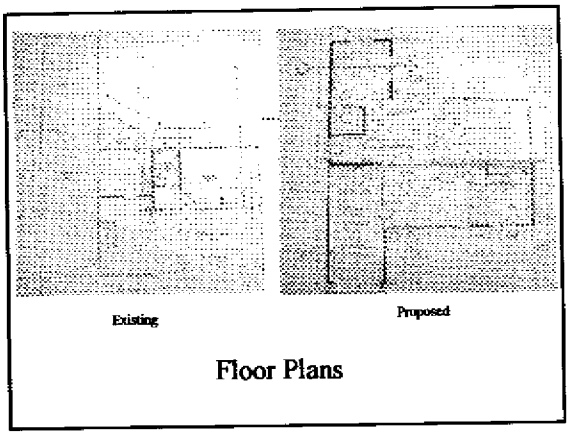
Housing Rehabilitation Program

June 2001 – June 2002	8 Units (all SFD's)
June 2002 - June 2003	5 Units (all SFD's)
June 2003 – June 2004	3 Units (all SFD's)
June 2004 – June 2005	2 Units (1 SFD, 1 mobilehome)

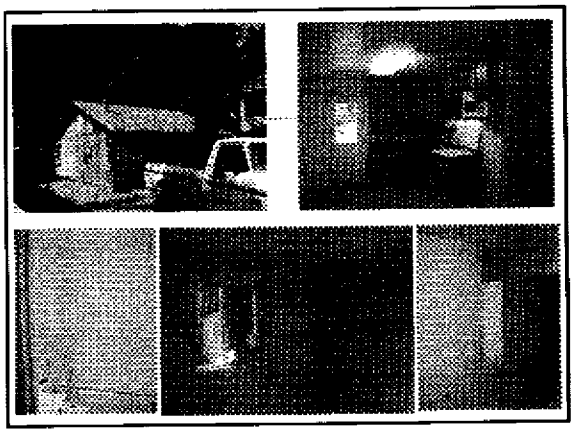
Cost and complexity of rehabilitation projects is increasing; the grant money is not funding as many projects as in the past!

Presented by Lisa Oakley

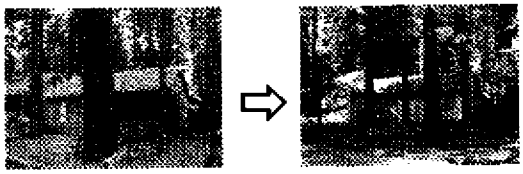




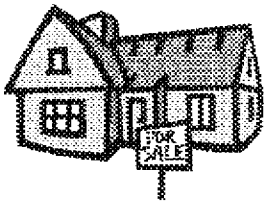
Floor Plans



Housing Rehabilitation



First-Time Homebuyer Program



FTHB General Guidelines

Low Income - 80% of Median Income

1-Person	$35,900
2-Person	$41,000
3-Person	$46,150
4-Person	$51,300
5-Person	$55,400
6-Person	$59,500

FTHB Program

June 2001 – June 2002	**11 Units**
June 2002 - June 2003	**6 Units**
June 2003 – June 2004	**6 Units**
June 2004 – June 2005	**1 Unit (purchased for $231,000)**

Maximum Loan Amount - $150,000
2% Deferred Loan for 45 Years
2005 Maximum Purchase Price - $375,000
House Payments 30-37% of Gross Income
Assumable Loan If Sold to another FTHB

Affordable Rental Housing

New Construction and Rehabilitation Projects

New Rental Project Approvals

June 2001 – June 2002
None
June 2002 - June 2003
18 Units (Sky Forest Acres (*formerly* Emerald Bay Estates), 14 one-bedroom and 4 two-bedroom units for people with disabilities, all Very Low Income)
June 2003 – June 2004
26 Units (Evergreen Apartments, 24 two-bedroom and two three-bedroom units *and* Marjorie Street, a one bedroom unit – all low-income)
June 2004 – June 2005
19 Units (Sierra Recovery Center Motel Conversion to deed restricted Affordable Housing; 7 multi-person style units [x 2.5 persons per unit], plus Manager's Quarters)

Previously Completed Projects

- Tahoe Pines Apts.
  - 28 units for families
- Tahoe Valley Townhomes
  - 70 units for families
- Tahoe Senior Plaza
  - 45 units for seniors
- Bijou Woods Apts.
  - 92 units for families

Monitoring Requirements

- After units are deed restricted, they are annually monitored:
  - On-site Inspection of Interior and Exterior
  - Compliance with Rent and Income Limits
  - Review of Lease Terms
  - Affirmative Marketing

Other Proposed Projects

- New Senior Housing Project on Herbert and Pioneer – funding requested, Design Review application not yet submitted
- Sierra Garden Apartments: Rehabilitation of 76 units for individuals and small families (approved)

Other Recent Actions

- Condominiumization of Existing Residential Development. Amendment to Section 32-20 of the South Lake Tahoe City Code adopted October 19, 2004. Ordinance No. 945. Provided new opportunities to create ownership deed restricted housing units.
- Motel Conversion to Deed Restricted Affordable Housing and Bonus Unit Substitution Standards. Amendment to Section 32-33 of the South Lake Tahoe City Code adopted November 16, 2004. Ordinance No. 949. Developed the standards for deed restricted affordable housing units resulting from motel conversions and through bonus unit substitution.
- Multiple Family Dwelling Inspection and Maintenance Program. Enactment of Chapter 14A of the South Lake Tahoe City Code adopted November 16, 2004. Ordinance No. 948. Created the multifamily inspection program and funding mechanism for the same.

Moderate-Income Housing

- No Moderate-Income units created to date
- Council approved a moderate-income housing program on July 5, 2005
- Expectation is that the private sector will create these units

What about annexation?

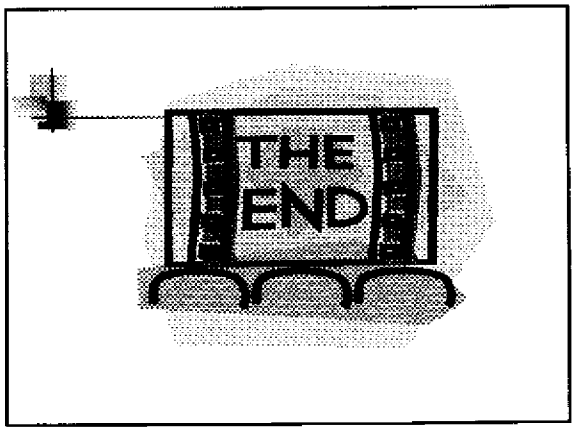
Program 7: Assess the desirability and feasibility of annexation if needed to provide additional lands with capability to accommodate housing needs/demands.

Responsible Party: City Senior Staff

Funding: Staff time

Timeframe: Long-term

Expected Outcome: If needed, additional sites for housing development.



Regional Housing Needs Plan

El Dorado County LAFCO
September 28, 2005

Gregory Chew
Associate Planner
Sacramento Area Council of Governments
gchew@sacog.org (916) 340-6227

Outline

1. What is SACOG and its role in the Regional Housing Needs Plan (RHNP)?
2. What is the RHNP?
3. What are the four economic categories?
4. What does this mean to local governments in terms of the Housing Element?

1. What is SACOG?

SACOG = Sacramento Area Council of Governments

2. What is the Regional Housing Needs Plan (RHNP)?

RHNP :

- Is a state mandated plan
- Allocates to cities and counties their "fair share" of 6 county region's projected housing needs by income category
- Covers five year period

2. What is the RHNP?

- Allocation targets intended to ensure that adequate sites are zoned and available to address housing demand
- Allocations are NOT required actual production numbers

3. What Are the Economic Categories"?

Affordability:

Adequate, available to all economic segments

Measuring Affordability:

housing costs relative to income

3. What Are the Economic Categories?

MFI = Median Family Income, the household income that 50% of households make more and 50% of households make less than this amount

- Above moderate 120+% of MFI
- Moderate income: 80-120% of MFI
- Low income: 50-80% of MFI
- Very low income: <50% of MFI

3. What Are Economic Categories?

Median Family Income (family of four) in the Sacramento statistical metropolitan region [1] is:

$64,100

Moderate income:80-120%	$51k-$77k
Low income: 50-80%	$32k-$51k
Very low income: <50%	<$32k

[1] U.S. Department of Housing and Development, 2005

3. What Are the Economic Categories?

California statewide [2]:

Median cost of a house is

$569, 000

Which means a household's annual income must be:

$126,000

[2] California Association of REALTORS, Sept 8 and 26, 2005 and press releases

3. How affordable is our housing?

California statewide[3]:

Percent of California households have this income:

16%

[3] California Association of REALTORS, Sept. 8, 2005 press release

4. What Does the RHNP Mean to Local Governments?

- SACOG starts RHNP update in mid-2006
- Cities/counties update their General Plan Housing Element upon receiving allocations in mid-2007.
- Next Housing Element Update due to State Housing and Community Development in 2008 (RHNP covers 2008-2013)

5. What questions/concerns do you have?

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LAFCOs and RHNA—Tracking gains and losses

By Scott Smith

The 2000 revisions to the Cortese-Knox-Hertzberg Act authorized LAFCO to stick its big toe into the pond (or alligator swamp?) of State housing policy. Section 56001, the Act's preamble, emphasizes LAFCO's role in providing housing for residents of all income levels. LAFCO is to favor ". . .*growth within, or through the expansion of, the boundaries of those local agencies which can best accommodate. . .*" housing for persons and families of incomes of all levels.

Subsection 56668(l) of the Act requires LAFCOs to consider "*The extent to which the proposal will assist the receiving entity in achieving its fair share of the regional housing needs as determined by the appropriate council of governments.*"

LAFCOs are left to their own devices to determine how to assist receiving entities—usually cities annexing territory—in fulfilling their fair share of the regional housing needs assessment (RHNA). Just exactly what is the exercise here? How does LAFCO *assist*? The law doesn't indicate whether LAFCO's role is to:

- Allow annexing cities to vent unmet RHNA into annexation areas;
- Take from counties and give to cities territory in which the city's RHNA could be increased and allocated; or
- Somehow facilitate or broker RHNA transfers from counties to cities.

The following principles should guide our interpretation of this snippet of a law:

- The intent of the law (as manifested in Section 56001) is to promote housing;
- Section 56668's mandate is to *consider* RHNA—not to compel success, reallocation, or transfer of RHNA; and
- State housing law restricts agencies' ability to transfer RHNA (even by agreement) outside the five-year housing element update and without oversight by the appropriate council of governments and the State Department of Housing and Community Development.

Given these factors, Section 56668 at least requires LAFCO to:

1. Quantify the annexing city's RHNA and the city's success in meeting its RHNA within current jurisdictional boundaries;
2. Determine whether the city will be able to use the annexation area to enhance housing opportunities, ideally, though the possible increase in its RHNA to take full advantage of the annexation area; and
3. Determine whether the county's ability to meet its RHNA will be impaired by losing the annexation area to the city. (This probably requires reference to the county's anticipated use of the actual area in furtherance of its RHNA goals.)

As suggested above, LAFCO's ability to compel or broker a RHNA transfer from counties to cities between housing element cycles may be constrained by State housing law. Government Code Section 65584 provides for the assessment of regional housing needs and the allocation of the unmet need among jurisdictions as part of their five-year housing element cycles. This presents a question of whether LAFCOs or affected agencies may adjust those numbers at all between updates.

Government Code Section 65584.5, which allowed for the contractual shift of RHNA between cities and counties—with the COG's blessing—sunsetted in 2000. It is possible, however, that agencies might agree to jointly petition HCD and their COG to have their RHNA ledgers adjusted to take the annexation into account at the beginning of the next update cycle. This type of contract may at least provide an adjusted baseline that the contracting agencies would be estopped from challenging during the next housing element cycle. ■

Scott Smith is a partner with Best Best & Krieger LLP. He advises Orange County LAFCO.

Sprawl *(continued from page 6)*

LAFCO AND HOUSING PROJECTIONS

FAQs, SUGGESTIONS & RESOURCES

Prepared for the CALAFCO Staff Workshop, March 14, 2002, by Everett Millais, Executive Officer, Ventura LAFCO - Recovering COG Executive Director & Community Development Director

1. **Why must LAFCO be involved in housing issues?**
The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH) added a new factor that LAFCOs must consider equally in reviewing proposals for changes or organization or reorganization.

> Government Code § 56668(l): The extent to which the proposal will assist the receiving entity in achieving its fair share of the regional housing needs as determined by the appropriate council of governments.

The CKH also added a section to the Government Code that provides for LAFCOs to consider regional growth goals and polices.

> Government Code § 56668.5: The commission may, but is not required to, consider the regional growth goals and policies established by a collaboration of elected officials only, formally representing their local jurisdictions in an official capacity on a regional or subregional basis. This section does not grant any new powers or authority to the commission or any other body to establish regional growth goals and policies independent of the powers granted by other laws.

The result of these new provisions, one mandatory and one permissive, is to not only involve LAFCOs in housing issues by specifically emphasizing fair share housing needs, but to also give LAFCOs the formal ability to consider regional growth goals as established by both regional and subregional COGs.

2. **How can a LAFCO determine whether a proposal will assist a receiving entity to achieve its fair share of the regional housing needs?**
Every city and county is required to have a Housing Element as part of its General Plan. (see Gov Code §65580 et seq. – Planning and Zoning Law, Division 1, Chapter 3, Article 10.6) In preparing the Housing Element the city or county must identify adequate sites which will be made available through appropriate zoning and development standards, and with services and facilities, to meet the housing needs. (Gov Code §65583) The regional housing need numbers are determined by the applicable council of governments (or by the State Department of Housing and Community Development – HCD - if there is no applicable COG). Numbers of housing units are established for each city and county for the next five years by income categories (low, low/moderate, moderate, etc.). Emphasis is on the adequate provision of low and low/moderate income housing. Cities and counties must use these numbers in their Housing Elements. (Gov Code § 65584). The Housing Element must also be accepted by HCD. The approved Housing Element is the best resource in

considering whether a proposal will assist a receiving entity to achieve its fair share of the regional housing needs.

Suggestions:

- Modify the LAFCO application form to specifically request information necessary for LAFCO to address the extent to which a proposal will assist the receiving entity in achieving its fair share of the regional housing needs.
- Acquire and review current copies of the approved Housing Element for each city and your county as resource documents.

Notes:

- The law only requires LAFCOs to consider the "receiving entity." This typically means cities. A county would only be a "receiving entity" in the case of a detachment from a city.
- Housing Element requirements and regional housing needs are not applicable to special districts. Special districts, however, may provide needed services for a city to meet its fair share of regional housing needs. Therefore, this factor should also be considered for proposals for changes of organization or reorganization by districts, even though a district is really not a "receiving entity."

3. **What if the "receiving entity" does not have an approved Housing Element?** The law requires that LAFCOs consider the fair share need as set by "the appropriate council of governments." If there is no COG, the numbers are set by HCD. Regardless of whether or not a city or county has an approved Housing Element, LAFCO staff should have and review the fair share regional housing need numbers from the COG (or HCD).

   LAFCO is not responsible for enforcing the requirement that cities and counties have approved Housing Elements, but the fair share numbers established by the COG do not include all of the interrelated information required in a Housing Element. Thus, consideration of the fair share need factor could be more difficult if LAFCO must rely solely on the COG numbers.

   In theory, Housing Elements must be reviewed and updated every five years. Since the early 1990's, however, this five-year interval was postponed by the legislature until 2001. So as not to overly burden HCD, the Housing Element cycle and the setting of fair share numbers by COGs have been phased around the State. The six county SCAG region, for example, has completed the process (except for the law suits over the numbers between cities and SCAG and SCAG and HCD) while other COGs are just getting under way.

   If the COG or HCD have yet to set the numbers for your county and its cities for the latest round of Housing Element updates, chances are the only numbers available are from the late 1980s or early 1990s, and are woefully out-of-date. Rather than rely on these past numbers, determinations about proposals should note that the COG (or

HCD) has yet to decide on a receiving entity's fair share of regional housing needs. Relevant information submitted by the receiving entity as a part of the application should also be considered. In extreme cases, the fact that there are no current fair share need numbers could be cause for denial of a proposal based on both the lack of the ability to consider the factor relating to fair share need and the inability to consider the factor relating to consistency with the receiving entity's general plan. Remember that the Housing Element is a mandatory part of a general plan. The lack of a current, approved Housing Element could invalidate a county or city general plan.

4. **Our COG (and/or County and/or cities) has invited LAFCO to be a part of the process to determine fair share regional housing needs. What role should LAFCO play?**
Legally, LAFCOs have no role. Determining and apportioning fair share regional housing needs is the responsibility of the COG and HCD. The Regional Housing Needs Assessment (RHNA – "rain-na") process for setting fair share regional housing needs is defined in the law (Gov Code § 65584), but also is somewhat like the process for approving legislation or making sausage. It is often controversial, usually messy, and the results may not resemble the underlying ingredients (or have a bearing on reality!).

   It's always nice to be invited to a party, however. It is useful for LAFCO staff to understand the process and beneficial to know about any "horse trading" or compromises agreed upon as the numbers are established. Of particular importance would be the setting of numbers for a city that rely on a prospective change of organization or reorganization.

   Suggestion: If invited to participate in the number setting process, keep it as a staff liaison function.

5. **Our COG (and/or County and/or local housing advocates) want LAFCO to arbitrate or condition proposals to redistribute fair share regional housing needs in acting on changes of organization or reorganization. Can we / should we do this?**
LAFCOs have no authority to determine fair share regional housing needs and no authority to transfer regional housing needs. The law defines a transfer process and there is no mention of any LAFCO involvement. (Gov Code § 65584.5). If supported by substantial evidence in light of the whole record (and your LAFCO legal counsel) it might be possible for LAFCO to condition a proposal upon a county and city transferring regional housing needs pursuant to the process specified in the law. The transfer process, though, is time consuming, difficult, uncertain and could result in actions not anticipated by LAFCO. It would be best if counties, cities, COGs and HCD agreed upon the transfer process prior to LAFCO action and urged LAFCO to consider it as a part of established regional growth goals and policies.

   Another argument for LAFCOs not becoming involved the redistribution of fair share regional housing needs is the COG determines fair share regional housing needs based on growth projections and other factors that, in theory, include existing

boundaries for cities. After all, counties and cities must identify adequate sites that will be made available through appropriate zoning to accommodate fair share needs, and zoned land must already be within a jurisdictions boundaries. In setting the numbers a COG cannot rely on LAFCO to approve any change of organization or reorganization proposal. Thus, in theory, there really shouldn't be a need for any redistribution of fair share regional housing needs resulting from changes of organization or reorganization. Plus, existing law provides for the whole process of establishing the numbers for fair share regional housing needs to occur every five years (at least in theory).

Suggestion: Don't get involved in arbitrating or conditioning proposals upon the redistribution of fair share regional housing needs if at all possible. If your Commission is insistent, proceed only based on the advice and oversight of your legal counsel.

6. **My Commission is really interested in becoming involved in housing issues and wants to establish affordable housing policies, including a policy requiring a minimal level of affordability for new residential annexations. What should I do?**
It's always nice to know that someone else has already dealt with a question. The Santa Cruz LAFCO decided against establishing affordable housing policies in February 2002. Concerning a possible policy to require a minimal level of affordability for new residential annexations, the Santa Cruz LAFCO Counsel issued a written opinion stating that LAFCO "does not ... have legal authority to adopt such a policy." (check out www.santacruzlafco.org - February 6, 2002 meeting for the full report titled "Housing Policy")

Suggestion: If your Commission wants to go anywhere near this issue you should first talk with Pat McCormick at the Santa Cruz LAFCO. Also, involve your legal counsel and have him or her communicate with the Santa Cruz LAFCO Counsel.

7. **Where can I get more information?**
The Governor's Office of Planning and Research (OPR) issues General Plan Guidelines. The latest version (1998) contains a 10 page section on Housing Elements, including some definitions. It is available in Adobe PDF format under "General Planning Publications" on the OPR web site (www.opr.ca.gov).

In preparing Housing Elements Gov Code § 65585 requires each city and county to consider advisory Housing Element Guidelines issued by HCD pursuant to Health & Safety Code §50459. Even though this is not a new requirement current HCD Guidelines are nowhere to be found on the web or in the State Code of Regulations. Apparently, HCD has recently released new Guidelines. They should be available by calling HCD at (916) 445-4782. You may be able to obtain prior versions from county or city planning departments.

Also, remember to communicate and share information with staff from other LAFCOs!

STATE OF CALIFORNIA -BUSINESS, TRANSPORTAT AND HOUSING AGENCY ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
Division of Housing Policy Development
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STATE HOUSING ELEMENT LAW

State law requires each city and county to adopt a general plan containing at least seven elements including housing. Unlike the other mandatory general plan elements, the housing element, required to be updated every five years, is subject to detailed statutory requirements and mandatory review by a State agency (Department of Housing and Community Development). Housing elements have been mandatory portions of general plans since 1969. This reflects the statutory recognition that the availability of housing is a matter of statewide importance and that cooperation between government and the private sector is critical to attainment of the State's housing goals. The regulation of the housing supply through planning and zoning powers affects the State's ability to achieve its housing goal of "decent housing and a suitable living environment for every California family" and is critical to the State's long-term economic competitiveness.

Housing element law requires local governments to adequately plan to meet their existing and projected housing needs including their share of the regional housing need. Housing element law is the State's primary market-based strategy to increase housing supply and choice. The law recognizes that in order for the private sector to adequately address housing needs and demand, local governments must adopt land-use plans and regulatory schemes that provide opportunities for, and do not unduly constrain, housing development.

The Department is required to allocate the region's share of the statewide housing need to Councils of Governments (COG) based on Department of Finance population projections and regional population forecasts used in preparing regional transportation plans. The COG develops a Regional Housing Need Plan (RHNP) allocating the region's share of the statewide need to the cities and counties within the region. The RHNP should promote the following objectives to:

(1) Increase the housing supply and the mix of housing types, tenure, and affordability in all cities and counties within the region in an equitable manner;
(2) Promote infill development and socioeconomic equity, the protection of environmental and agricultural resources, and the encouragement of efficient development patterns; and
(3) Promote an improved intraregional relationship between jobs and housing.

Housing element law recognizes the most critical decisions regarding housing development occur at the local level within the context of the periodically updated general plan. The RHNP component of the general plan requires local governments to balance the need for growth, including the need for additional housing, against other competing local interests. The RHNP process of housing element law promotes the State's interest in encouraging open markets and providing opportunities for the private sector to address the State's housing demand, while leaving the ultimate decision about how and where to plan for growth at the regional and local levels. While land-use planning is fundamentally a local issue, the availability of housing is a matter of statewide importance. The RHNP process requires local governments to be accountable for ensuring that projected housing needs can be accommodated. The process maintains local control over where and what type of development should occur in local communities while providing the opportunity for the private sector to meet market demand.

In general, a housing element must at least include the following components:

A Housing Needs Assessment including:

- Existing Needs - The number of households overpaying for housing, living in overcrowded conditions, or with special housing needs (e.g., the elderly, large families, homeless) the number of housing units that need rehabilitation, and assisted affordable units at-risk of converting to market-rate.

- Projected Needs - The city or county's share of the regional housing need as established in the RHNP prepared by the COG. The allocation establishes the number of new units needed, by income category, to accommodate expected population growth over the planning period of the housing element. The RHNP provides a benchmark for evaluating the adequacy of local zoning and regulatory actions to ensure each local government is providing sufficient appropriately designated land and opportunities for housing development to address population growth and job generation.

A Sites Inventory and Analysis:

The element must include a detailed land inventory and analysis including a sites specific inventory listing properties, zoning and general plan designation, size and existing uses; a general analysis of environmental constraints and the availability of infrastructure, and evaluation of the suitability, availability and realistic development capacity of sites to accommodate the jurisdiction's share of the regional housing need by income level. If the analysis does not demonstrate adequate sites, appropriately zoned to meet the jurisdictions share of the regional housing need, by income level, the element must include a program to provide the needed sites including providing zoning that allows owner-occupied and rental multifamily uses "by-right" with minimum densities and development standards that allow at least 16 units per site for sites needed to address the housing need for lower-income households.

An Analysis of Constraints on Housing:

- Governmental - Includes land-use controls, fees and exactions, on- and off-site improvement requirements, building codes and their enforcement, permit and processing procedures, and potential constraints on the development or improvement of housing for persons with disabilities.

Housing Programs

Programs are required to identify adequate sites to accommodate the locality's share of the regional housing need; assist in the development of housing for low- and moderate-income households; remove or mitigate governmental constraints; conserve and improve the existing affordable housing stock; promote equal housing opportunity; and preserve the at-risk units identified.

Quantified Objectives

Estimates the maximum number of units, by income level, to be constructed, rehabilitated, and conserved over the planning period of the element.

AGENDA ITEM NO. 5
OTHER BUSINESS

COMMUNITY SERVICES DISTRICT LAW UPDATE

CSDs and LAFCo: What's New?

CALAFCO Annual Conference • 8 September 2005

A summary of elements of the new CSD legislation (SB 135-Kehoe) that are of interest to LAFCos.

- Clarifies the intent of the Legislature and the purposes of CSDs. Encourages LAFCos to consider consolidation of single purpose CSDs where appropriate. (§61001)

  (b) *The Legislature finds and declares that for many communities, community services districts may be any of the following:*
  (1) A permanent form of governance that can provide locally adequate levels of public facilities and services.
  (2) An effective form of governance for combining two or more special districts that serve overlapping or adjacent territory into a multifunction special district.
  (3) A form of governance that can serve as an alternative to the incorporation of a new city.
  (4) A transitional form of governance as the community approaches cityhood.

  (c) *In enacting this division, it is the intent of the Legislature:*
  (1) To continue a broad statutory authority for a class of limited-purpose special districts to provide a wide variety of public facilities and services.
  (2) To encourage local agency formation commissions to use their municipal service reviews, spheres of influence, and boundary powers, where feasible and appropriate, to combine special districts that serve overlapping or adjacent territory into multifunction community services districts.
  (3) That residents, property owners, and public officials use the powers and procedures provided by the Community Services District Law to meet the diversity of the local conditions, circumstances, and resources.

- Establishes a definition for "latent powers." (§61002)

  (h) "Latent power" means those services and facilities authorized by Part 3 (commencing with Section 61100) that the local agency formation commission has determined, pursuant to subdivision (h) of Section 56425, that a district did not provide prior to January 1, 2006.

  This section also clarifies that any service that an existing CSD is currently authorized to perform—but LAFCo has determined through its MSR process is not being performed prior to 1 January 2006—becomes a latent power.

- Makes the formation process by petition consistent with CKH §56700. (§61010)

- LAFCo must determine there are sufficient revenues and may condition formation of a CSD on voter approval of funding source. (§61014)

  (a) Once the proponents have filed a sufficient petition or a legislative body has filed a resolution of application, the local agency formation commission shall proceed pursuant to Part 3 (commencing with Section 56650) of Division 3 of Title 5.

  (b) Notwithstanding any other provision of law, a local agency formation commission shall not approve a proposal that includes the formation of a district unless the commission determines that the proposed district will have sufficient revenues to carry out its purposes.

  (c) Notwithstanding subdivision (b), a local agency formation commission may approve a proposal that includes the formation of a district where the commission has determined that the proposed district will not have sufficient revenue provided that the commission conditions its approval on the concurrent approval of special taxes or benefit assessments that will generate those sufficient revenues. In approving the proposal, the commission shall provide that, if the voters or property owners do not approve the special taxes or benefit assessments, the proposed district shall not be formed.

  (d) If the local agency formation commission approves the proposal for the formation of a district, then the commission shall proceed pursuant to Part 4 (commencing with Section 57000) of Division 3 of §Title 5.

- While discouraged in the legislation, LAFCos may create dependent CSDs under certain circumstances. (§61022)

  (a) In the case of a proposed district which contains only unincorporated territory in a single county and less than 100 voters, the local agency formation commission may provide, as a term and condition of approving the formation of the district, that the county board of supervisors shall be the initial board of directors until conversion to an elected board of directors.

  (b) The board of supervisors shall adopt a resolution pursuant to subdivision (b) of Section 61027, placing the question of having an elected board of directors on the ballot when any of the following occurs:

CALAFCO

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2005 CALAFCO Annual Conference

THE NEW CSD LAW

What Will CSDS Be Doing Now?

What Are A CSD's Powers Now?

A. WHAT WILL CSDS BE DOING NOW?

CSDs must take certain actions to implement SB 135.

1. Expand the Board.

- CSDs must have a 5 person board of directors. (§61040)
- Temporary rules for exceeding 5 members in the event of a consolidation of CSDs. (§61030)
- CSDs with a 3 person board must add directors at the next general district election after January 1, 2006. (§61041)

2. Stagger the Board.

- CSD board members must have staggered terms of office. (§61042)
- Existing non-staggered boards must be staggered at the first meeting after January 1, 2006. (§61042(b))
  - Determine class by lot—then at next election:
    3 members receive 4 year terms
    2 members receive 2 year terms
  - Thereafter all terms are 4 years.

3. Check the Voting Procedures.

- Board action by a "majority of a quorum" is not permitted.
- Board action (whether ordinance, resolution or motion) requires the vote of a majority of the full membership of the board. (§61045)
  - Not less than 3 affirmative votes.

4. Adopt Mandatory Procedures if not Already in Place.

- CSDs must have formal operating policies (§61945(g)). At a minimum this includes:

  Administrative
  Fiscal
  Personnel
  Purchasing

5. Appoint a General Manager

●"Board –General Manager" form of government adopted. CSD must have a General Manager (§61050(a))

●General Manager duties:

Implement board policies
Appoint, supervise, and discipline employees
Supervise facilities and services
Supervise finances

6. Adopt a Budget

●CSDs must adopt a budget annually before July 1 (§61110)

May choose to have a biennial budget.

●Notice and hearing requirements adopted.

●Format requirements. (§§61110, 61111, 61112.)

B. WHAT ARE A CSD's POWERS NOW?

1. Powers of a CSD

●Are as listed in SB 135 (see attached).

31 authorized services and facilities (§61100 and following)

9 special services retained for particular CSDs. (§61105)

Consent from other agencies required for certain services (§§61100(i), (l), (m), (n), (r), (w), (x), 61103, 61104):

Police protection
Improving public works
Undergrounding utilities
Emergency medical services
Flood protection
Snow removal on other agencies' roads
Animal control
Regulation of streets and roads
Granting of franchises

●Nomenclature of "latent" or "unutilized" powers redefined:

▪"Latent Power" – service or facility not provided as of January 1, 2006 (§61002(h))

- Current use is as determined by LAFCO.

- LAFCOs and CSDs should consult and confirm immediately which powers are being used.

2. Utilization of a Latent Power

- Future use of latent powers requires LAFCO approval. (§61106)

- Divestiture of power

  - Requires LAFCO approval if would require another public agency to provide a new or higher level of service (§61107)

  - May be done by board ordinance if another public agency is not affected.

3. New Financial Review by LAFCO?

- LAFCO must find that new proposed CSDs will have sufficient revenues to provide services. (§61014)

  - May condition approval on concurrent approval by the voters of the CSD and special taxes or benefit assessments to provide revenue.

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SUMMARIES OF LAFCO LITIGATION

CALAFCO ANNUAL CONFERENCE

SEPTEMBER 7, 2005

MONTEREY

CLARK H. ALSOP
LEGAL COUNSEL
CALAFCO

LAFCO CASES

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tioner received. Rather, "because of the important role that state courts play in applying federal constitutional guarantees and because of federalism concerns," the Court must further find, as noted above, that the state court's denial of petitioner's claim of ineffective assistance of counsel was "objectively unreasonable" within the meaning of 28 U.S.C. § 2254(d)(1). *See id.* at 1323.

[10] Here, Charles Mitchell was an available witness who would have corroborated petitioner's otherwise uncorroborated testimony as to the reason petitioner entered the Gonzalez home, specifically, that he did so out of fear for his safety and not for the purpose of committing theft. For all of the reasons discussed above, the potential impact of Charles Mitchell's testimony was so great that one cannot describe as "merely incorrect or erroneous," the state court's determination that counsel's failure to interview or call Charles Mitchell as a witness either constituted reasonable performance or was not prejudicial to petitioner. *See id.* Consequently, this Court concludes that "even under the narrow constraint of [its] review under AEDPA and the Supreme Court's precedent," *see id.*, the state court's denial of petitioner's claim of ineffective assistance of counsel was an objectively unreasonable application of federal law as set forth in *Strickland.*

Accordingly, petitioner is entitled to habeas relief.

CONCLUSION

In light of the foregoing, the petition for a writ of habeas corpus is hereby GRANTED. Respondent shall release petitioner from custody, unless, with thirty days of the filing of this order and entry of judgment thereon, respondent has filed an appeal with the United States Court of Appeals for the Ninth Circuit or the State has set a date for a new trial.

Petitioner's request for immediate release is hereby DENIED.

The Clerk shall close the file.

IT IS SO ORDERED.

MODESTO IRRIGATION DISTRICT, Plaintiff,

v.

PACIFIC GAS AND ELECTRIC COMPANY, Defendant.

No. C-98-3009 MHP.

United States District Court, N.D. California.

March 18, 2004.

Background: Irrigation district brought antitrust action against electric utility that allegedly attempted to prevent it from offering electric service in city. The United States District Court for the Northern District of California, Patel, Chief Judge, 61 F.Supp.2d 1058, dismissed action, and district appealed. The Court of Appeals, 54 Fed.Appx. 882, reversed, and district filed second amended complaint.

Holdings: On utility's motion for summary judgment, the District Court, Patel, Chief Judge, held that:

(1) under California law, irrigation district that owned electricity generating facilities was not a pure municipal corporation with authority under California Constitution to provide utility service state-wide, and

(2) district did not suffer antitrust injury when utility attempted to prevent it from offering electric services in city outside of district's boundaries.

Motion granted.

Opinion (*People* v. *Griffin*)
on pages 917-936 omitted.

REVIEW GRANTED*

[No. F038163. Fifth Dist. July 31, 2002.]

COUNTY OF FRESNO, Plaintiff and Respondent, v.
MALAGA COUNTY WATER DISTRICT et al., Defendants and Appellants.

SUMMARY

The trial court entered judgment for a county enjoining a county water district from incorporating as a city, finding that the district was not statutorily authorized to incorporate as a city in the absence of special enabling legislation. (Superior Court of Fresno County, No. 629114-0, Jane A. York, Judge.)

The Court of Appeal reversed. The court held that the water district had the ability to incorporate as a city under the Cortese-Knox Local Government Reorganization Act of 1985 (Gov. Code, § 56000 et seq.). Its status as a "district of limited powers" did not take it outside of the statutes that permit "any district" to make "any change of organization," including a city incorporation. The existence of a specific statutory scheme (Gov. Code, § 56116) that permits such a district to merge with or become a subsidiary district of a city did not in and of itself preempt the district's general power to make any change of organization defined in Gov. Code, § 56021, which defines a change of organization as including incorporation. The 1985 act aims to facilitate the logical and reasonable development of cities and districts in order to provide for the present and future needs of each county and its communities. (Opinion by Levy, J., with Dibiaso, Acting P. J., and Harris, J., concurring.)

[No. E029777. Fourth Dist., Div. Two. Feb. 11, 2002.]

HOME GARDENS SANITARY DISTRICT, Plaintiff and Appellant, v. CITY OF CORONA et al., Defendants and Appellants.

[Opinion certified for partial publication.*]

SUMMARY

A sanitary district brought an action against a city, seeking declaratory and injunctive relief and a writ of mandate, arising from the city's annexation of property within plaintiff's district and adoption of a policy that favored the city's power to provide sewer services in the district. The trial court entered judgment enjoining the city from interfering with the district's power to provide sewer service within the disputed area and declaring that both the district and the city had the right to provide sewer service there. (Superior Court of Riverside County, No. 347746, Sharon J. Waters, Judge.)

The Court of Appeal modified the judgment to provide that the sanitary district had the right to prevent the city from providing sewer service to property within the disputed area and, as modified, affirmed. The court held that, while the trial court did not err by enjoining the city from interfering with the district's exercise of its statutory powers, it did err in finding both the city and the district had the right to provide sewer service in the district. Sanitary districts are created by state law (Health & Saf. Code, § 6400 et seq.) and are statutorily authorized to collect and dispose of solid waste (Health & Saf. Code, §§ 6518.5, 6512, subd. (a)). Accordingly, the city's policy imposing conditions on the district's right to collect sewage within the district conflicted with state law and was void. The court further held that the district had the exclusive right to provide sewer services within its borders. (Opinion by McKinster, J., with Hollenhorst, Acting P. J., and Ward, J., concurring.)

*Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of part A.

[No. B141893. Second Dist., Div. Six. Apr. 25, 2001.]

EMBARCADERO MUNICIPAL IMPROVEMENT DISTRICT, Plaintiff and Appellant, v.
COUNTY OF SANTA BARBARA et al., Defendants and Respondents.

SUMMARY

Following a county's approval of the annexation of a parcel of land, which was within the boundaries of a municipal improvement district, to two other special districts, the improvement district sought mandamus and other relief to challenge the amount of tax increment the county allocated to it from the development of a resort hotel on the parcel. The trial court sustained the demurrers of the county and the special districts, without leave to amend, on the ground that the action was barred by the statute of limitations in Code Civ. Proc., § 863. (Superior Court of Santa Barbara County, No. 233408, Thomas Pearce Anderle, Judge.)

The Court of Appeal affirmed. The court held that following approval of the annexation of the parcel of land to the other special districts, the district, in seeking mandamus and other relief, lacked standing to challenge the amount of tax increment allocated to it by the county from the development of the hotel, since the district could have no property interest in any portion of a future tax increment generated by new development to which it did not provide services in the past or intend to provide services in the future. The allocation agreement did not take away funds appropriated for the district's use, but maintained the district's historic share in property tax revenues. The court further held that the district's action was barred by the 60-day limitations period of Code Civ. Proc., § 863. The annexation was a reorganization subject to the Cortese-Knox Local Government Reorganization Act of 1985 (Gov. Code, § 56000 et seq.). Actions to determine the validity of any change of organization or reorganization must be brought pursuant to specified parts of the Code of Civil Procedure (Gov. Code, § 56103). The validating statutes contain a 60-day statute of limitations to further the important policy of speedy determination of the public agency's action (Code Civ. Proc., § 863). The district could not challenge an intermediate step in the annexation process long after the validity of the annexation itself had become conclusive. (Opinion by Coffee, J., with Yegan, Acting P. J., and Perren, J., concurring.)

[No. C029036. Third Dist. Sept. 21, 1999.]

CITY OF SHASTA LAKE et al., Plaintiffs, Cross-defendants and Respondents, v.
COUNTY OF SHASTA et al., Defendants, Cross-complainants and Appellants.

[Opinion certified for partial publication.*]

SUMMARY

A city and the city redevelopment agency filed an action seeking declaratory relief concerning the conditions of incorporation, naming as defendants the county and the county redevelopment agency. The county cross-complained for declaratory relief and breach of contract. The parties stipulated that a retired judge would try the matter and characterized their arrangement as binding arbitration of all issues raised in the complaint. The judge rendered a decision in favor of the city, filed as a judgment in the action, which apportioned the property tax revenue between the city and county and provided for the payment of costs and services arising out of the incorporation of the city. (Superior Court of Shasta County, No. 128617, James E. Kleaver, Temporary Judge.†)

The Court of Appeal reversed in part and affirmed in part. The court held that despite the fact that the parties stipulated to try the matter before a retired judge and characterized their arrangement as binding arbitration, the court had appellate jurisdiction, since the matter was de facto an appeal from a judgment of a temporary judge under Cal. Const., art. VI, § 21. The court also held that the trial court correctly construed an incorporation condition, requiring payments from the city redevelopment agency to the county of the difference between the property tax base transfer amount and the amount of property taxes actually generated within the boundaries of the new city, construing this provision to mean the net property tax benefit accruing to the county from the new city territory, after deducting the property tax revenues diverted to the state and adding revenues which replaced the

*See footnote 1, *post*, page 5.
†Pursuant to California Constitution, article VI, section 21.

diverted property tax revenues. The court further held that the city was required to pay the county only for the net cost of services that the county continued to furnish to the city after incorporation, rather than for the entire cost of those services (Gov. Code, § 57384, subd. (b)). The court also held that the trial court properly allowed the city to include Prop. 172 revenues in the amount that the city could offset against its payment under its agreement with the county for the fiscal year at issue. (Opinion by Blease, Acting P. J., with Raye, J., concurring. Dissenting opinion by Nicholson, J. (see p. 19).)

[No. A078417. First Dist., Div. Three. Apr. 6, 1998.]

McBAIL & COMPANY et al., Plaintiffs and Respondents, v. SOLANO COUNTY LOCAL AGENCY FORMATION COMMISSION, Defendant and Appellant.

SUMMARY

A group of landowners brought an action seeking to vacate the county local agency formation commission's denial of their annexation petition. The trial court issued a writ of mandate ordering defendant to vacate the denial and to reconsider the petition, but limiting defendant's discretion as to the basis upon which it could again deny the petition on reconsideration. (Superior Court of Solano County, No. L007176, Dwight C. Ely, Judge, and Franklin R. Taft, Judge.*)

The Court of Appeal affirmed the trial court's issuance of the writ remanding the matter to defendant for further proceedings, but reversed to the extent that the writ purported to limit defendant's discretion as to the basis upon which it could again deny the petition on reconsideration. The court held that the trial court properly issued the writ ordering defendant to vacate its denial and to reconsider the petition. A local agency formation commission's denial of an annexation petition must be based upon articulated reasons that have a rational connection to the purposes of the enabling statute, and those reasons, in turn, must be supported by substantial evidence in the record of the administrative hearing. In this case, defendant's reason for denying plaintiffs' petition—that it did not enhance the mission of the neighboring air force base—was not rationally related to the purposes of the Cortese-Knox Local Government Reorganization Act (Gov. Code, § 56000 et seq.), or to its standards for evaluating an annexation petition, specifically, its standard allowing for the rejection of proposals that create significant negative effects on the county or neighboring agencies. Since there was no legitimate statement of the basis for defendant's decision, there was nothing against which to scrutinize the substantiality of the evidence. The court further held, however, that in issuing the writ the trial court exceeded its mandamus powers by purporting to limit defendant's discretion in denying

*Judge of the Municipal Court for the Vallejo-Benicia Judicial District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

the petition on reconsideration. Mandamus does not lie to control the manner in which an agency may exercise its discretion. (Opinion by Walker, J., with Phelan, P. J., and Corrigan, J., concurring.)

[No. B090779. Second Dist., Div. Three. Sept. 28, 1995.]

LAS TUNAS BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT et al., Petitioners, v.
THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent;
THE CITY OF MALIBU, Real Party in Interest.

SUMMARY

Pursuant to Pub. Resources Code, § 26500 et seq., a city adopted a formation resolution creating a geologic hazard abatement district. One of the conditions in the resolution permitted the city to dissolve the district if the city found the district's plan to abate the hazard was not feasible or would not serve the purposes of state law. Subsequently, the city adopted a resolution ordering the district to proceed with its dissolution. The district filed a declaratory relief action seeking a judicial determination that the city lacked jurisdiction or authority to order the district to dissolve and a permanent injunction enjoining the city from attempting to exercise any jurisdiction or authority over the district. The district moved for summary judgment. The trial court denied the motion, finding that the district was estopped to assert that the condition in the formation resolution was invalid. (Superior Court of Los Angeles County, No. SC029408, Hugh C. Gardner III, Judge.)

The Court of Appeal issued a peremptory writ of mandate directing the trial court to vacate its order denying the district's summary judgment motion and to enter a summary judgment declaring the district to be a validly formed political subdivision of the state and enjoining the city from taking any action to dissolve the district except in compliance with the Cortese-Knox Local Government Reorganization Act of 1985 (Gov. Code, § 56000 et seq.). The court held that the dissolution procedures of the act control the dissolution of a geologic hazard abatement district, and thus the city could not dissolve the district on the basis of common law contract and estoppel principles. The district's request for relief was largely proper but was overly broad, since the city was not foreclosed from adopting a resolution of application pursuant to Gov. Code, § 56800, to begin the laborious process of seeking a dissolution of the district. The court held further that the district's action was not time barred under the First Validating Act of 1992.

Although Stats. 1992, ch. 62, § 8, requires an action or proceeding contesting the validity of any action or proceeding relating to the formation of a public body to be commenced within six months of the effective date of the validating act, the district was not contesting the validity of the formation of the district. Rather, the district brought the action to resist the city's attempt to dissolve the district, and thus the act was inapplicable. (Opinion by Klein, P. J., with Croskey and Aldrich, JJ., concurring.)

[No. C016756. Third Dist. May 25, 1994.]

SAN MIGUEL CONSOLIDATED FIRE PROTECTION DISTRICT et al., Plaintiffs and Appellants, v.
GRAY DAVIS, as State Controller, etc., et al., Defendants and Respondents;
HARRY WEINBERG, as Superintendent, etc., et al., Real Parties in Interest.

SUMMARY

Eight fire protection districts, a municipal improvement water district that provided fire protection, and nine individual taxpayers from four counties filed a petition for a writ of mandate and a complaint for declaratory relief against the State Controller and other state and county officials, challenging both the constitutionality of Rev. & Tax. Code, § 97.03, subd. (c), which reallocates a percentage of property tax revenues from special districts to each county's educational revenue fund, and defendants' computations pursuant to that statute. The trial court denied the petition and entered judgment in favor of defendants on the complaint. (Superior Court of Sacramento County, No. CV373120, James Timothy Ford, Judge.)

The Court of Appeal affirmed. It preliminarily held that the districts did not have standing to make the challenges, but that the individual taxpayers did have standing. The court held that Rev. & Tax. Code, § 97.03, subd. (c), is not invalid: the terms are sufficiently defined so that the provision is not unconstitutionally vague; the provision does not conflict with Cal. Const., art. XIII A (Prop. 13); and the statute does not violate equal protection, even though small fire districts are exempt. The court also held that since the provisions of Rev. & Tax. Code, § 97.03, subd. (c), are clear and unambiguous, there is no basis for referring to other statutes dealing with allocation of revenues in order to construe the statute. The court further held that the districts did not have a right to offset the amounts owed them by the state against the Rev. & Tax. Code, § 97.03, reallocations, since the districts' claims for reimbursement had not yet been adjudicated. As to specific exclusions and calculations sought by plaintiffs and as to the assertion that the statute impaired certain contract rights, the court held that those issues were not yet ripe for judicial resolution. (Opinion by Nicholson, J., with Davis, Acting P. J., and Raye, J., concurring.)

[No. A060343. First Dist., Div. Three. June 29, 1994.]

BROADMOOR POLICE PROTECTION DISTRICT, Plaintiff and Appellant, v.
SAN MATEO LOCAL AGENCY FORMATION COMMISSION et al., Defendants and Respondents.

SUMMARY

A police protection district brought an action against a city and the county local agency formation commission to invalidate the annexation of an uninhabited area by the city. Plaintiff claimed that Gov. Code, § 57078, subd. (a), by requiring that "majority protest" to the annexation of uninhabited areas be made by the written protests of landowners owning 50 percent or more of the assessed value of the land within the territory, violated equal protection in that, due to Prop. 13, those landowners who most recently purchased their property would have the greatest voting strength. The trial court granted judgment on the pleadings for defendants. (Superior Court of San Mateo County, No. 363184, Harlan K. Veal, Judge.)

The Court of Appeal affirmed. It held that the statute, since it did not relate to voting or an election, but only to a protest, was subject to the rational relationship test, not the strict scruting test. Under the rational relationship test, the court held, the statute was valid. The statutory protest procedure permits public participation in the annexation decision and at the same time advances the Legislature's policy goals by being based on land ownership, the most logical criterion for public participation in an otherwise uninhabited territory. The system is accurate, simple, and administratively convenient, and it is fair, in that any benefits and burdens that follow annexation are in proportion to the assessed value of the land. (Opinion by Merrill, J., with White P. J., and Jenkins, J.,* concurring.)

[No. B066033. Second Dist., Div. Six. June 2, 1993.]

OXNARD HARBOR DISTRICT et al., Plaintiffs and Appellants, v. LOCAL AGENCY FORMATION COMMISSION OF VENTURA COUNTY et al., Defendants and Respondents.

SUMMARY

A harbor district and two individuals filed a petition for a writ of mandate to overturn the actions of a local agency formation commission and two cities resulting in the detachment of a substantial portion of the district's area. Plaintiffs claimed that application of Gov. Code, § 57075, subd. (a)(3) (detachments in voter districts), under which the detachment was ordered, denied them equal protection of the laws under U.S. Const., 14th Amend., and infringed upon their rights under U.S. Const., 1st Amend. The trial court, applying the rational basis test, denied the writ petition. (Superior Court of Ventura County, No. 114074, Barbara A. Lane, Judge.)

The Court of Appeal affirmed. It held that the trial court properly applied a rational basis standard of review, finding that Gov. Code, § 57075, did not "disenfranchise" voters of the district to be detached; it simply conditioned their right to vote on special issues to a certain percentage of protests evidencing that a substantial number of voters in the territory were concerned about the proposed detachment. The court also held that the time limit in which voters had to protest the detachment under Gov. Code, § 57075, had no appreciable impact on plaintiffs' right to protest; it was not unreasonably short, nor was it inconceivable that the necessary percentage of voters could register protests within the time allowed. The court further held that the statute's failure to provide for elections without the requisite number of protests was sufficiently related to the legitimate legislative purpose of orderly, efficient, and economical function and determination of municipal boundaries to meet equal protection requirements. Finally, the court held that the local agency formation commission's decision was neither arbitrary nor capricious, and was supported by substantial evidence. (Opinion by Stone (S. J.), P. J., with Gilbert and Yegan, JJ., concurring.)

[No. B069545. Second Dist., Div. Two. Apr. 12, 1993.]

GREENWOOD ADDITION HOMEOWNERS ASSOCIATION et al., Plaintiffs and Respondents, v.
CITY OF SAN MARINO et al., Defendants and Appellants.

SUMMARY

A homeowners association, its president, and two members filed an application with a local agency formation commission (LAFCO), seeking to annex their neighborhood to an adjacent city. Under such circumstances, Rev. & Tax. Code, § 99, subd. (b), requires the affected county and city to negotiate for up to 30 days, to determine the property tax revenues to be exchanged upon annexation. The city and the county did begin such negotiations, but the city terminated negotiations due to anticipated revenue shortfalls and city residents' objections to the proposed annexation. Thereafter, LAFCO informed the parties that the application would not be set for a hearing, due to the parties' failure to meet the requirements of Rev. & Tax. Code, § 99, subd. (b). In a subsequent action brought by the applicants against the city, its council members, and LAFCO, the trial court issued a writ of mandate, requiring the city and LAFCO to recommence the annexation process. The court ordered the city to negotiate with the county and adopt a resolution agreeing to an exchange of property tax revenues, and further ordered LAFCO to issue a certificate of filing and set plaintiffs' application for a hearing, whether or not the city and county arrived at such a resolution. (Superior Court of Los Angeles County, No. BC 050600, Stephen E. O'Neil, Judge.)

The Court of Appeal reversed, and directed the trial court to enter a judgment denying the petition for a writ of mandate. The court held that the trial court erred in ordering the city to recommence negotiations with the county and to come to an agreement on the exchange of property tax revenues. Although Rev. & Tax. Code, § 99, subd. (b)(4), does require the affected city and county to negotiate for up to 30 days to determine such revenue exchange, its terms do not require the parties actually to reach an agreement. The court further held that the trial court erred in ordering LAFCO to issue a certificate of filing and set plaintiffs' application for a hearing, even if the city and county were unable to agree to an exchange of property tax revenues for the area in question. This was so, the court held, because issuance of a certificate of filing is a prerequisite to a hearing on an application (Gov. Code, § 56828, subd. (i)), and an agreement concerning the exchange of property tax revenues is a prerequisite to issuing a certificate of filing (Rev. & Tax. Code, § 99, subd. (b)(6)). (Opinion by Fukuto, J., with Boren, P. J., and Nott, J., concurring.)

[No. S023805. Nov. 9, 1992.]

BOARD OF SUPERVISORS OF SACRAMENTO COUNTY et al., Plaintiffs and Appellants, v.
LOCAL AGENCY FORMATION COMMISSION OF SACRAMENTO COUNTY, Defendant and Appellant;
CITRUS HEIGHTS INCORPORATION PROJECT, Real Party in Interest and Appellant.

SUMMARY

A county board of supervisors, a county deputy sheriffs' association, and an organization of citizens filed a petition for a writ of mandate and a complaint for injunctive and declaratory relief challenging a local commission's proposed incorporation of a new city in the county. The court entered judgment in favor of plaintiffs on certain environmental impact issues, but declared that Gov. Code, § 57103, which requires that all voters in an election to incorporate a city reside in the territory to be incorporated, did not violate constitutional equal protection. (Superior Court of Sacramento County, No. 358798, James Timothy Ford, Judge.) The Court of Appeal, Third Dist., No. C006792, reversed that portion of the judgment declaring § 57103 constitutional, but otherwise affirmed the judgment.

The Supreme Court reversed the judgment of the Court of Appeal as to the issue of constitutionality with instructions to direct the trial court to enter judgment for defendant with respect to the constitutionality of Gov. Code, § 57103, and it denied motions to partially publish the decision of the Court of Appeal concerning the environmental impact issues. The Supreme Court held that § 57103 does not violate equal protection guaranties under the United States or California Constitution either on its face or as applied to the proposed incorporation. Although other county residents were similarly situated in that they would be affected by changes in tax revenues should the area be incorporated, the statute's impact on other county residents' right to vote fell short of being real and appreciable so as to mandate strict judicial scrutiny, especially in light of the state's plenary power to regulate the formation of political subdivisions, since the financial effect on individuals was minimal. Under the applicable deferential rational basis test, § 57103 was constitutional, since it furthered the legislative purpose of preventing large, relatively disinterested majorities from vetoing orderly growth and development. (Opinion by Mosk, J., expressing the unanimous view of the court.)

[No. D013821. Fourth Dist., Div. One. Mar. 23, 1992.]

CITY OF HIGHLAND, Plaintiff and Appellant, v.
COUNTY OF SAN BERNARDINO, Defendant and Appellant.

SUMMARY

A city filed a petition for a writ of mandate seeking to compel a county to correct errors in its allocation of property taxes to the city (Gov. Code, § 56842). The trial court issued a judgment granting the petition in part and denying it in part. (Superior Court of San Diego, No. 622619, Judith Lynnette Haller, Judge.)

The Court of Appeal affirmed in part and reversed in part. The court held that the trial court erred in finding that the county, in calculating the total net cost of the services that were transferred to the city upon its incorporation, was not required to include all costs of the services, including indirect costs that the county might not actually have been able to reduce upon transferring the services. The court also held that the trial court improperly determined that interest earned on property taxes after they had been collected was to be categorized as property tax. The court further held that the trial court properly found that the base-year figure used to compute the "auditor's ratio" (Gov. Code, § 56842, subd. (c)(1)) had to be adjusted for increases in assessed values realized between the base year and the year in which the city received its first distribution three years later. The city's mandamus petition, the court further held, was not barred by laches, estoppel, or by any failure by the city to exhaust its administrative remedies. (Opinion by Froehlich, J., with Todd, Acting P. J., and Huffman, J., concurring.)

[No. B050272. Second Dist., Div. Three. July 23, 1990.]

MALIBU COMMITTEE FOR INCORPORATION et al., Plaintiffs and Respondents, v.
LOS ANGELES COUNTY BOARD OF SUPERVISORS et al., Defendants and Appellants.

SUMMARY

In a mandamus proceeding by incorporators of a new city against a county board of supervisors, following an election in favor of incorporation and the board's fixing the effective date of incorporation, the trial court directed the board to fix the effective date as of the recordation of the certificate of completion. Under the Cortese-Knox Government Reorganization Act of 1985 (Gov. Code, § 56000 et seq.) the date of recordation is the effective date, when neither the local agency formation commission nor the conducting authority (the board of supervisors) fixes an effective date. The commission did not fix an effective date in its terms and conditions and the trial court ruled that the board could not fix an effective date other than that fixed by the commission. (Superior Court of Los Angeles County, No. C759045. John Zebrowski, Judge.)

The Court of Appeal reversed with directions to enter judgment denying the petition for a writ of mandate. The court held the board of supervisors had authority to fix the effective date of the incorporation under Gov. Code, § 57202, since the commission resolution approving the incorporation proposal did not specify an effective date in its terms and conditions, whereupon the statutory scheme gave the board the authority to fix a date within one year of the election, which the board had done. (Opinion by Klein, P. J., with Danielson and Croskey, JJ., concurring.)

[No. C000443. Third Dist. Sept. 6, 1989.]

L.I.F.E. COMMITTEE, Plaintiff and Respondent, v.
CITY OF LODI, Defendant and Appellant.

SUMMARY

The trial court issued a writ of mandate commanding a city to cease enforcing the provisions of an ordinance passed by local voter initiative. The ordinance established a green belt around the city, and conditioned future annexations of areas of the green belt on voter approval of amendment to the land use element of the city's general plan. (Superior Court of San Joaquin County, No. 178641, James P. Darrah, Judge.)

The Court of Appeal affirmed. It held that the provision conditioning future annexation on voter approval of amendments to the general plan was invalid under Cal. Const., art. XI, § 7, since it conflicted with the annexation provisions established by paramount state law. Even though the provision did not require the local electorate to vote directly on the issue of annexation itself, conditioning annexation on voter approval of the general plan amendment nevertheless rendered it effectively subject to a citywide vote in violation of state law. (Opinion by Puglia, P. J., with Blease and Marler, JJ., concurring.)

[No. C002404. Third Dist. Apr. 24, 1989.]

CITY OF REDDING, Plaintiff and Appellant, v. SHASTA COUNTY LOCAL AGENCY FORMATION COMMISSION, Defendant and Respondent.

[Opinion certified for partial publication.†]

SUMMARY

A city petitioned for a writ of mandate to vacate a local agency formation commission's approval of another city's annexation project and its ratification of the annexing city's negative declaration, prepared under the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.), and to order the commission to prepare an environmental impact report for the project. The trial court sustained the commission's demurrer without leave to amend and dismissed the petition. (Superior Court of Shasta County, No. 88666, John K. Letton, Judge.‡)

The Court of Appeal affirmed, holding that the trial court properly sustained the demurrer without leave to amend and dismissed the petition. The court held that the commission had no duty to prepare an environmental impact report since it was not the lead agency. Because the annexing city prezoned the area in question, the court held, Cal. Code Regs., tit. 14, § 15051, subd. (b)(2), plainly designated that city as the lead agency. Further, the court held, since the city seeking writ relief had attacked the annexing city's negative declaration in an earlier proceeding, before the commission had acted on the annexation, the commission was prohibited under Pub. Resources Code, § 21167.3 (where an environmental impact report or negative declaration is challenged as failing to comply with the law, responsible agencies must assume that the report or declaration does comply and may issue a conditional approval or disapproval), from taking steps toward production of a new environmental document. (Opinion by Sims, Acting P. J., with Marler, J., and Deegan, J.,* concurring.)

* Deleted on direction of Supreme Court by order dated July 14, 1989.

† Pursuant to rule 976.1 of the California Rules of Court, all portions of this opinion shall be published except part I of the Discussion.

‡ Assigned by the Chairperson of the Judicial Council.

[No. D007718. Fourth Dist., Div. One. Feb. 27, 1989.]

FALLBROOK SANITARY DISTRICT, Plaintiff and Appellant, v. SAN DIEGO LOCAL AGENCY FORMATION COMMISSION et al., Defendants and Respondents.

SUMMARY

The trial court denied a sanitation district's petition for mandamus relief from a local agency formation commission decision to add a provision to a city incorporation proposal submitted to the commission to change the district's status from an independent entity to a subsidiary of the proposed city. (Superior Court of San Diego County, No. 595690, Jack R. Levitt, Judge.)

The Court of Appeal dismissed the district's appeal as moot, since the incorporation proposal was rejected by the voters at a ratification election. However, it held that the issue of whether the commission could make material additions to the proposal was of continuing public importance that permitted its resolution on appeal. It further held that the express language, legislative purpose, and history of Gov. Code, § 56325, subd. (a) (local agency commission to review and approve or disapprove with or without amendment proposals for changes of local agency organizations), indicates that the commission could make both additions and deletions so long as the proposal's general nature was not changed. The nature of a city with control over sanitation services is fundamentally similar to a city without such power. (Opinion by Benke, J., with Kremer, P. J., and Wiener, J., concurring.)

[No. B029353. Second Dist., Div. Five. Sept. 22, 1988.]

ANTELOPE VALLEY-EAST KERN WATER AGENCY, Plaintiff and Respondent, v.
LOCAL AGENCY FORMATION COMMISSION OF LOS ANGELES COUNTY, Defendant and Respondent;
AGUA DULCE WATER COMMITTEE, Real Party in Interest and Appellant;
DEPARTMENT OF WATER RESOURCES, Intervener and Respondent.

SUMMARY

The trial court granted a writ of mandate to set aside a local agency formation commission resolution relieving certain homeowners of property taxes as a condition of detachment from a local water agency. (Superior Court of Los Angeles County, No. C643144, Ricardo A. Torres, Judge.)

The Court of Appeal affirmed. It held that the resolution's condition was directly contrary to the specific, controlling state law (Stats. 1959, ch. 2146, § 84, p. 5181 et seq., Deering's Wat.—Uncod. Acts (1970 ed.) Act 9095, p. 581 et seq.) that was part of the state water project measure that created the water agency. It also held that the Cortese-Knox Local Government Reorganization Act (Gov. Code, § 56000 et seq.) did not permit the commission to disregard the specific law. In enacting that act, the Legislature did not intend that local government formation commissions be empowered to relieve a detached territory of tax obligations that the Legislature in enacting the specific law had deemed essential to the successful financing of the state water project. (Opinion by Ashby, Acting P. J., with Boren and Kennard, JJ., concurring.)

[No. B022489. Second Dist., Div. Three. Feb. 10, 1988.]

CITY OF AGOURA HILLS, Plaintiff and Appellant, v. LOCAL AGENCY FORMATION COMMISSION OF LOS ANGELES COUNTY, Defendant and Appellant.

SUMMARY

Acting under the Cortese-Knox Local Government Reorganization Act of 1985 (Gov. Code, § 56000 et seq.), a local agency formation commission (LAFCO) adopted a sphere of influence for a city which was considerably smaller than that sought by the city. In mandamus proceedings initiated by the city, the trial court granted a judgment for a writ directing the commission to set aside the sphere of influence on the basis that the commission's written findings were legally inadequate. The commission appealed from the judgment, and the city also appealed from portions of the judgment. (Superior Court of Los Angeles County, No. C556591, Irving A. Shimer and Jack M. Newman, Judges.)

The Court of Appeal reversed and remanded with directions to enter a judgment denying the petition for writ of mandate. The court held the trial court committed reversible error in ruling that LAFCO's written statement of determinations was legally inadequate, pointing out that the trial court properly found its determination was supported by substantial evidence, and that the commission's findings are not to be overturned on review unless the determination was not supported by substantial evidence in light of the whole record. The court further held that the California Environmental Quality Act is not applicable to this sphere of influence decision, and neither was Gov. Code, § 84308, governing when recipients of political contributions shall withdraw from proceedings involving a license, permit, or other entitlement for use pending before an agency. (Opinion by Baker, J.,* with Klein, P. J., and Danielson, J., concurring.)

* Assigned by the Chairperson of the Judicial Council.

[No. E003827. Fourth Dist., Div. Two. Dec. 2, 1987.]

GEORGE MITCHELL et al., Plaintiffs and Appellants, v. CITY OF INDIO et al., Defendants and Respondents.

SUMMARY

The trial court granted defendant city's motion for summary judgment in an action to invalidate an annexation and compel a special election, finding that no harm was done as a result of a one-day insufficiency in the period of notice by publication of the meeting to consider the annexation. Other and better forms of notice had been given, and no proof was made or evidence offered by plaintiffs that one day would have made any difference in the outcome. The trial court further found that any inaccuracy in the voters' list, used by the city to determine whether a sufficient percentage of registered voters to require an election had protested the annexation, did not raise a triable issue of fact since the city clerk had no duty to verify the correctness of the voters' register. (Superior Court of Riverside County, No. 47501, Noah N. Jamin, Judge.)

The Court of Appeal affirmed, holding that the notice provision of Gov. Code, §§ 57002, 56154, was directory in effect, and that the only statutory provision that would render the reorganization void was the substantial prejudice provision of Gov. Code, § 56107. The court held that the one-day variation in the publication of notice of the meeting did not require invalidation of the annexation, in view of plaintiff's failure to present evidence that the variation prevented any voters or landowners in the affected area from giving a full and free expression of their will, and of the trial court's finding that plaintiffs had offered no evidence that one day would have made any difference. The court further held that, since the city clerk's only duty regarding the voters' list was to obtain the register from the county clerk and to ascertain from it the number of registered voters in the affected territory, the alleged inaccuracy of the list did not raise a triable issue of fact. (Opinion by McDaniel, J., with Campbell, P. J., and Dabney, J., concurring.)

[No. A029998. First Dist., Div. Two. July 22, 1986.]

CITY OF LIVERMORE, Plaintiff and Respondent, v. LOCAL AGENCY FORMATION COMMISSION OF ALAMEDA COUNTY, Defendant and Appellant.

SUMMARY

A city brought an action seeking to prevent a local agency formation commission from implementing revised sphere of influence guidelines. The trial court ruled that defendant should have prepared an environmental impact report assessing the potential impact of the guidelines and thus issued a writ of mandate ordering defendant to set aside its new guidelines and its declaration that no report was necessary. The court also enjoined implementation of the guidelines. (Superior Court of Alameda County, No. H-95049, Winton McKibben, Judge.)

The Court of Appeal affirmed the judgment insofar as it issued a writ of mandate commanding defendant to set aside the declaration and guideline revisions. It held that the revisions were a "project" within the meaning of Pub. Resources Code, §§ 21065, 21080 and Cal. Admin. Code, tit. 14, § 15378, and thus defendant was not exempt from the requirement of the California Environmental Quality Act (Pub. Resources Code, § 21050 et seq.) that it prepare a report to assess the environmental impact of the guidelines. Further, the court held, defendant's conclusion that the revisions would not have a significant environmental impact was not supported by substantial evidence. However, the court held, neither the California Environmental Quality Act nor the Knox-Nisbet Act (Gov. Code, § 54773 et seq.), pertaining to local agency formation commissions, requires that the report show compliance with the Knox-Nisbet Act, and the court reversed the part of the judgment requiring defendant to show compliance with that act in its report. Finally, the court held, the trial court did not err in finding that a land company proposing to build a development outside plaintiff's sphere of influence was not an indispensable party. (Opinion by Smith, J., with Kline, P. J., and Rouse, J., concurring.)

[No. F001613. Fifth Dist. Nov. 30, 1984.]

FIG GARDEN PARK NO. 2 ASSOCIATION et al.,
Plaintiffs and Respondents, v.
LOCAL AGENCY FORMATION COMMISSION OF FRESNO COUNTY et al., Defendants and Appellants;
CITY OF FRESNO, Intervener and Appellant.

SUMMARY

In an action to invalidate an annexation without an election, the trial court concluded that the territory annexed did not qualify for annexation under Gov. Code, § 35150, subd. (f), which authorizes annexation of an "island" of territory without an election if the territory does not exceed 100 acres in area and constitutes the entire island, and if the territory is surrounded or substantially surrounded by the annexing city. The trial court also held the annexation was part of a municipal reorganization, subject to the protest and election requirements of the Municipal Organization Act of 1977 (Gov. Code, § 35000 et seq.), because the annexation was consummated at approximately the same time as another annexation, pursuant to a district reorganization, and the two areas were partly contiguous. The area annexed was substantially surrounded by the city, 98 percent of its perimeter being part of the city. The annexation proceedings covered this entire island, which was less than 100 acres. The trial court concluded that the annexation did not constitute the entire island and exceeded 100 acres in area because a 230-foot gap in the perimeter, where the territory adjoined county land, made all the property north of the gap part of the island. (Superior Court of Fresno County, No. 264955-6, Charles F. Hamlin, Judge.)

The Court of Appeal reversed. The court held the trial court erred in concluding that the territory did not qualify for annexation under Gov. Code, § 35150, subd. (f). It held that if an area does not exceed 100 acres and is substantially surrounded by a city (or by the city and county boundary or the Pacific Ocean or by the city and adjacent cities), the area qualifies for annexation under the island annexation act, assuming that the other requirements of § 35150, subd. (f), are met. The court also held, in view of the facts that the two annexation proceedings were processed independently of each other and there was no indication that the two proceedings were undertaken to evade the island annexation law, adding the facts of contiguity to the nearly simultaneous annexations did not add anything to a determination of whether there was a municipal reorganization. (Opinion by Brown (G. A.), P. J., with Andreen and Woolpert, JJ., concurring.)

[No. A015060. First Dist., Div. One. May 16, 1984.]

PAUL SCHAEFFER, as Trustee, etc., Plaintiff and Respondent, v. COUNTY OF SANTA CLARA et al., Defendants and Appellants.

SUMMARY

A city annexed a 19.73-acre parcel of land improved as a shopping center, which was located in a larger, unincorporated, 600-acre tract surrounded entirely by the city, over the owner's protest and without an election. The owner brought an action to set aside the annexation proceedings. The trial court entered a summary judgment in favor of the owner, declaring the annexation proceedings to be invalid. (Superior Court of Santa Clara County, No. 466616, Bruce F. Allen, Judge)

The Court of Appeal affirmed. Gov. Code, §§ 35150 and 35224.5, authorize annexation of a territory without an election if it does not exceed 100 acres in area and constitutes the entire island, and if it is surrounded or substantially surrounded by the annexing city. The court held that, assuming the 19.73-acre tract was "substantially surrounded" by the city (68 percent of its boundary was coterminous with that of the city), it did not constitute the "entire island"; it was but a part of the 600-acre island surrounded by the city. (Opinion by Elkington, J., with Racanelli, P. J., and Holmdahl, J., concurring.)

Opinion (*Cochran* v. *Herzog Engraving Co.*) on pages 366-373 omitted.

MODIFIED AND REPRINTED*

[No. A015501. First Dist., Div. Three. Feb. 16, 1984.]

RICHARD G. BECK et al., Plaintiffs and Appellants, v.
COUNTY OF SAN MATEO et al., Defendants and Respondents.

SUMMARY

Residents and property owners in an area annexed to a city without an election brought an action pursuant to Code Civ. Proc., § 860 et seq., and Gov. Code, § 35005, to challenge the validity of the annexation. The annexation was conducted pursuant to the Municipal Reorganization Act of 1977. (Gov. Code, § 35000 et seq.) The trial court sustained a general demurrer to plaintiffs' fourth cause of action without leave to amend and granted defendants' motions for summary judgment on plaintiffs' first, second, and ninth causes of action. Thereafter a final judgment was entered validating the annexation. Gov. Code, § 35150, subd. (f), allows the annexation of territory without an election if the territory does not exceed 100 acres in area and such area constitutes the entire island to be annexed and is surrounded or substantially surrounded by the city to which the annexation is proposed or is surrounded by a city and adjacent cities. (Superior Court of San Mateo County, No. 251052, John J. Bible, Judge.)

The Court of Appeal affirmed. The court held that Gov. Code, § 35150, subd. (f), by denying an annexation election if the territory does not exceed 100 acres in area does not deny equal protection to residents of such territories, though residents in territories with more than 100 acres enjoy the right to protest and vote in an annexation proceeding (Gov. Code, § 35228). The court also held that annexation of the subject territory to the city without an election together with six other such territories did not constitute a municipal reorganization requiring an election pursuant to Gov. Code, §§ 35300-35315. (Opinion by White, P. J., with Scott and Feinberg, JJ., concurring.)

[Civ. No. 68053. Second Dist., Div. Six. Dec. 28, 1983.]

FELTON A. FERRINI et al., Plaintiffs and Respondents, v. CITY OF SAN LUIS OBISPO, Defendant and Appellant; PUBLIC INTEREST ACTION CENTER OF SAN LUIS OBISPO, Intervener and Appellant.

SUMMARY

In a declaratory relief action against a city, by the owner of uninhabited land which was the subject of a proposed annexation by the city, challenging a charter amendment, adopted by initiative, which required voter approval of annexations, the trial court held that the charter amendment was unconstitutional. (Superior Court of San Luis Obispo County, No. 52034, Nathaniel O. Bradley, Judge.*)

The Court of Appeal affirmed, holding that the Municipal Organization Act of 1977 (Gov. Code, §§ 35000-35500), which establishes a comprehensive regulatory system for municipal annexation and provides for elections only when inhabited territory is to be annexed, precluded the city from conducting an election on the proposed annexation. It held that, through the act, the Legislature occupied the field of annexation of unincorporated areas, preempting the city's charter amendment. It also held that the act delegates authority over the conduct of annexation to the Local Agency Formation Commission and the city council, and that delegation of authority beyond this, even to the city electorate, is impermissible. (Opinion by Gilbert, J., with Stone, P. J., and Abbe, J., concurring.)

[No. AO21741. First Dist., Div. Two. Aug. 25, 1983.]

I.S.L.E. et al., Plaintiffs and Respondents, v.
COUNTY OF SANTA CLARA et al., Defendants and Appellants.

SUMMARY

An association and individual residents of territories annexed to a city brought an action against a county and others to determine the validity of 16 municipal annexations which were conducted in 1979 and 1980 under an exception to the protest election requirement of Gov. Code, §§ 35228 and 35236, for territories not exceeding 100 acres and substantially surrounded by the annexing city (former Gov. Code, § 35150, subd. (f)). The trial court granted plaintiffs' motion for summary judgment on two causes of action and dismissed the others, ruling that the annexations were a municipal reorganization which required an election in the affected territory, that denial of the vote to the inhabitants of the area could not withstand the strict scrutiny test, and that the statute therefore was invalid. (Superior Court of Santa Clara County, No. 452159, Bruce F. Allen, Judge.)

The Court of Appeal reversed the summary judgment and remanded with directions to enter summary judgment in favor of defendants. The court held that two or more annexations do not constitute a municipal reorganization, which was then defined in the applicable statute (Gov. Code, § 35042, subd. (b)) as "[t]wo or more changes of organization proposed for any single city." The court further held that the rational relationship test was applicable to plaintiffs' equal protection claim, and that the state had a legitimate interest in avoiding annexation election expense for small communities, avoiding tiny pockets of unincorporated territory, and promoting orderly and efficient formation and determination of city boundaries. The court held that Gov. Code, § 35150's classification, which limited the size of territories which may be annexed without election, bore a rational relationship to those ends. (Opinion by Rouse, J., with Kline, P. J., and Smith, J., concurring.)

[Civ. No. 20471. Third Dist. June 16, 1983.]

RURAL LANDOWNERS ASSOCIATION et al., Plaintiffs and Appellants, v. CITY COUNCIL OF LODI et al., Defendants and Respondents; GENIE DEVELOPMENT, INC., Real Party in Interest and Respondent.

SUMMARY

An association of property owners sought mandate to compel a city to vacate its decision approving a final environmental impact report (EIR) for the annexation and development of certain agricultural lands, as well as a general plan amendment, rezoning and tentative map approval for the development. The city took this action without having delivered a copy of the EIR to the Governor's Office of Planning Research (OPR) State Clearing House for review and comment as required by the California Environmental Quality Act (CEQA) administrative guidelines (Cal. Admin. Code, tit. 14, §§ 15161.5, 15161.6). The trial court determined that, although the city had abused its discretion in failing to submit a draft EIR to the OPR before it approved the project, any error was "harmless" since the city, even with comments from the state agencies, would have reached the same result. (Superior Court of San Joaquin County, No. 151180, James P. Darrah, Judge.)

The Court of Appeal reversed. The court held that the standard of review employed by the trial court was incorrect. The court held that where failure to comply with the law results in a subversion of the purposes of the CEQA by omitting information from the environmental review process, the error is prejudicial. The court also held that the trial court may not exercise its independent judgment on the omitted material by determining whether the ultimate decision of the lead agency would have been affected had the law been followed, since that decision was for the discretion of the agency, and not the courts. (Opinion by Carr, Acting, P. J., with Sparks and Sims, JJ., concurring.)

[No. AO22031. First Dist., Div. One. May 20, 1983.]

JOSEPH HORWATH et al., Plaintiffs and Respondents, v. LOCAL AGENCY FORMATION COMMISSION OF SAN MATEO COUNTY et al., Defendants and Appellants; EAST PALO ALTO CITIZENS' COMMITTEE ON INCORPORATION, Real Party in Interest and Appellant.

SUMMARY

An election was called to determine whether a city should be organized and whether two public entity districts within its proposed boundaries should be dissolved, pursuant to the District Reorganization Act (Gov. Code, § 56000 et seq.) providing for the reorganization of public entity districts at an election petitioned for by not less than 5 percent of the resident voters within the concerned territory. The trial court issued a writ of mandate to cease any further proceedings for the election, based on its determination that the Municipal Organization Act (Gov. Code, § 35000 et seq.) applied as to procedure and required for an election organizing or incorporating a city a petition of not less than 25 percent of the voters, and thus found the scheduled election legally uncalled for and invalid. (Superior Court of San Mateo County, No. 272816, Melvin E. Cohn, Judge.)

The Court of Appeal reversed, holding that the proposed new city, which, with territorially related public entity districts, was sought to be organized or reorganized, was a "district" subject to the 5 percent signature and other procedural requirements of the District Reorganization Act. The court noted that the District Reorganization Act provided that a "district" included a "new city" proposed to be incorporated when the board of supervisors did not object to such incorporation, and that in the present case the board of supervisors expressly sought such incorporation. (Opinion by Elkington, Acting P. J., with Holmdahl, J., concurring. Separate dissenting opinion by Newsom, J.)

[Civ. No. 53409. First Dist., Div. Three. Feb. 15, 1983.]

CITY OF SANTA CLARA, Plaintiff and Respondent, v. LOCAL AGENCY FORMATION COMMISSION OF SANTA CLARA COUNTY, Defendant and Appellant.

SUMMARY

A city applied to the county local agency formation commission (LAFCO) for annexation of two parcels of territory pursuant to the District Reorganization Act of 1965 (Gov. Code, § 56000 et seq.). The current use of each parcel was specified as agricultural, and the city had prezoned each parcel "A-agricultural." However, the city's general plan indicated that one parcel was designated for medium density residential use, and the other for light industrial development. Because the prezoning was inconsistent with the general plan designations, LAFCO deemed the proposals not categorically exempt from the California Environmental Quality Act (CEQA). LAFCO had adopted a policy that annexation of territory to a city was to be discouraged where the territory was prezoned agricultural but there might be an ultimate intended urban use. The city provided no environmental information, since there were no present plans to develop the property. LAFCO denied the applications without prejudice. The city petitioned the superior court for a writ of mandate, and the superior court entered a judgment granting the writ and ordering LAFCO to set aside its order, rehear the applications, and determine that the annexations were exempt from CEQA requirements. (Superior Court of Santa Clara County, No. 460778, Bruce F. Allen, Judge.)

The Court of Appeal reversed. The court held that the annexations did not fall within that class of annexations (class 19) categorically exempt from the requirements of the CEQA as provided in Cal. Admin. Code, tit. 14, § 15119, subd. (a), which exempts certain annexations to a city, provided, however, "that extension of utility services to the existing facilities would have the capacity to serve only the existing facilities," since the clear inference was that sometime within the foreseeable future after annexation utility services would be extended into the annexed parcels, and that these services would have the capacity to serve more than the farmhouses that presently existed in the annexed parcels. The court also held that, even if the annexations came within the description of a class 19 categorical exemption, the "unusual circumstances" of the inconsistency between the prezoning and the general plan removed the proposals from that exemption. (Cal. Admin. Code, tit. 14, § 15100.2, subd. (c).) Finally, the court held that, as a matter of intelligent regional planning, and regardless of CEQA, LAFCO's adoption of a policy discouraging annexation of territory to a city where the territory is prezoned agricultural but there may be an ultimate intended urban use, was an appropriate exercise of LAFCO's powers and duties. (Opinion by Barry-Deal, J., with Scott, Acting P. J., and Feinberg, J., concurring.)

[No. AO16686. First Dist., Div. Three. Jan. 10, 1983.]

RESOURCE DEFENSE FUND, Plaintiff and Appellant, v.
LOCAL AGENCY FORMATION COMMISSION OF SANTA CRUZ COUNTY, Defendant and Respondent.

SUMMARY

An environmental association, and individual members and taxpayers, filed a petition for a writ of mandate and/or prohibition seeking in their first cause of action to compel the local agency formation commission to adopt spheres of influence for each local governmental agency in the county, and in their second cause of action to compel the commission to set aside its approval of a specific project known as the "Sequoia Annexation." The trial court denied the petition as to the second cause of action. Petitioners then sought a writ of mandate and/or prohibition as to the annexation in the Court of Appeal. The Court of Appeal stayed all further proceedings related to the annexation pending its consideration of the petition. After briefing, the Court of Appeal dissolved the stay and denied the petition, without opinion. Subsequently, the trial court issued an alternative writ as to the first cause of action, and following briefing and argument denied the petition. (Superior Court of Santa Cruz County, No. 77044, Christopher C. Cottle, Judge.)

The Court of Appeal reversed and remanded with directions to the trial court to enter judgment consistent with the views expressed in its opinion. The court first held that its previous denial of a writ did not constitute res judicata or law of the case and therefore did not bar a subsequent appeal raising the same issues. On the merits, the court held that before a local agency formation commission could approve a proposal within its jurisdiction, it was required to develop, determine, adopt, and consider the "spheres of influence" of each local governmental agency which might include the subject territory in its sphere of influence (Gov. Code, §§ 54774, 54796). (Opinion by Barry-Deal, J., with Scott, Acting P. J., and Feinberg, J., concurring.)

[Civ. No. 6487. Fifth Dist. Nov. 26, 1982.]

SAM PISTORESI et al., Plaintiffs and Respondents, v.
CITY OF MADERA et al., Defendants and Respondents;
TREND HOMES, INC., Real Party in Interest and Appellant.

SUMMARY

The trial court ordered the issuance of a writ of administrative mandate requiring a county local agency formation commission to set aside its adoption of a declaration that the filing of an environmental impact report (EIR) was not required prior to approval of a city's proposal to annex a 32-acre parcel of agricultural land. (Superior Court of Madera County, No. 26580, John F. Keane, Judge.*)

The Court of Appeal affirmed. The court held that since the city's proposal was part of a plan for residential development of the land at a rate and to an intensity much greater than that already permitted under county zoning ordinances, the annexation proposal was a "project" under the California Environmental Quality Act (CEQA). The court held that the county local agency formation commission considering the proposal was therefore required under CEQA to file an EIR regarding the proposal. The court also held that since there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary was not sufficient to support a decision to dispense with preparation of an EIR. (Opinion by Andreen, J., with Hanson (P. D.), Acting P. J., and Woolpert, J., concurring.)

[L.A. No. 31414. Dec. 2, 1982.]

CITIZENS AGAINST FORCED ANNEXATION et al., Plaintiffs and Respondents, v. LOCAL AGENCY FORMATION COMMISSION OF LOS ANGELES COUNTY et al., Defendants and Appellants.

SUMMARY

The trial court issued a preliminary injunction in an action brought by a coalition of city residents and homeowners associations to prevent the annexation of unincorporated county territory to the city. Defendant Local Agency Formation Commission (LAFCO) adopted a resolution in favor of the proposed annexation pursuant to the Municipal Organization Act of 1977 (Gov. Code, § 35000 et seq.). Under Gov. Code, §§ 35228 and 35231, protests filed in response to LAFCO's resolution required the city to call a special election at which only the residents of the unincorporated territory could vote whether to approve or disapprove the annexation (since the proposed annexation would not have increased either the voting population or the assessed value of land in the city by 50 percent), and those residents voted in favor of annexation. The preliminary injunction barred LAFCO and its executive officers from executing and recording a certificate of completion, a document certifying the results of the election. (Superior Court of Los Angeles County, No. C 289937, Jerry Pacht, Judge.)

The Supreme Court reversed the order and remanded the matter with directions to enter an order denying the request for a preliminary injunction. The court held that any restriction on the franchise within the constitutionally relevant geographic area is invalid unless necessary to further a compelling state interest, and that in an annexation election the relevant geographic area encompasses both the region to be annexed and the annexing city. However, the court held that the state's interest in carrying out a policy of planned, orderly community development under the guidance of the commissions, and in particular its interest in avoiding the creation or perpetuation of islands of unwanted, unincorporated territories, is of compelling importance; moreover, that interest is one which could not be achieved if the annexation election was open to the residents of the annexing city. Thus, the court held that the restrictions under the 1977 act survive strict scrutiny and do not abridge rights guaranteed under the state or federal Constitutions. (Opinion by Broussard, J., with Bird, C. J., Mosk and Reynoso, JJ., concurring. Separate concurring opinion by Kaus, J., with Richardson and Newman, JJ., concurring.)

[Civ. No. 63411. Second Dist., Div. Four. July 28, 1982.]

DOROTHY SCURI et al., Plaintiffs and Appellants, v. BOARD OF SUPERVISORS OF VENTURA COUNTY et al., Defendants and Respondents.

SUMMARY

The superior court denied a petition for a writ of mandate to set aside the decision of a county board of supervisors to annex certain unincorporated areas to two cities in the county. The annexations were accomplished pursuant to Gov. Code, § 35150, which is within the Municipal Organization Act (Gov. Code, § 35000 et seq.), and which provides an exception to the requirement of an election for the annexation of territory not exceeding 100 acres in area and substantially surrounded by the city to which annexation is proposed ("island annexations"). Although Gov. Code, § 35014, provided that the authority to conduct annexations without an election was inapplicable to any territory which did not become surrounded or substantially surrounded by the annexing city until after a specified date, the annexations complained of were surrounded in part by the annexing city and in part by prime agricultural land (which was not subject to island annexation) as of that date. The prime agricultural land had been incorporated by subsequent nonisland annexations. (Superior Court of Ventura County, No. 72712, Charles R. McGrath, Judge.)

The Court of Appeal affirmed. The court held that the distinction between residents of territory consisting of more than 100 acres (who have the right to protest and vote in annexation proceedings) and residents of territory not exceeding 100 acres (who are not so entitled) was not a violation of equal protection, since the failure to provide for elections in those small communities was sufficiently related and thus bore a rational relationship to the legitimate legislative purpose of orderly, efficient, and economical formation and determination of city boundaries. The court also held that when a lot is substantially surrounded by the annexing city and otherwise surrounded by prime agricultural land, the government may annex that part which is agricultural, and then incorporate the nonagricultural land by whatever method is appropriate; thus, as in the instant case, since the remaining developed or developing land did not exceed 100 acres in size after the prime agricultural land was incorporated, the annexation properly proceeded without election. (Opinion by Kingsley, Acting P. J., with McClosky, J., and Berg, J.,* concurring.)

[Civ. No. 21526. Fourth Dist., Div. Two. Sept. 11, 1980.]

ENVIRONMENTAL COALITION OF ORANGE COUNTY, INC., et al., Plaintiffs and Appellants, v.
LOCAL AGENCY FORMATION COMMISSION OF ORANGE COUNTY, Defendant and Respondent;
KAUFMAN AND BROAD HOMES, INC., et al., Real Parties in Interest and Respondents.

SUMMARY

In a mandamus proceeding three private organizations sought to compel a local agency formation commission (LAFCO) to annul its certification of an environmental impact report (EIR) and to prepare a more comprehensive EIR on a proposed annexation by a city. The organizations had not named the city a defendant in the proceeding, nor notified it of the petition initiating the proceeding, nor filed any action to enjoin it from proceeding with annexation, in contravention of former Pub. Resources Code, § 21167.3, then in effect, while such a proceeding was pending. After the petition was filed, but before a hearing thereon, the city approved the annexation by resolution, and completion of the annexation became effective on LAFCO's execution, and filing with the county recorder of its certificate of completion (Gov. Code, §§ 35352, 35353, 35354). Following the hearing on the petition judgment was rendered denying the writ. (Superior Court of Orange County, No. 307030, Leonard H. McBride, Judge.)

The Court of Appeal dismissed the appeal for mootness. The court held that an action that had originally been based on a justiciable controversy could not be maintained on appeal where all the questions had become moot, that jurisdiction over the parties was necessary for a valid in personam judgment, that due process, involving notice and an opportunity for hearing, was essential to jurisdiction, that judgment could not be rendered in an action against a nonparty, and that the appeal of the denial of the petition for a writ of mandate was thus moot. Reversal of the judgment denying the petition would not have the practical effect intended by the petition of annulling the annexation that had already become completed. (Opinion by Tamura, Acting P. J., with Kaufman and Morris, JJ., concurring.)

[Civ. No. 21227. Fourth Dist., Div. Two. May 5, 1980.]

HILLS FOR EVERYONE, Plaintiff and Appellant, v. LOCAL AGENCY FORMATION COMMISSION OF ORANGE COUNTY et al., Defendants and Respondents.

SUMMARY

In a mandamus proceeding by an unincorporated association that sought to compel a Local Agency Formation Commission to set aside its approval of a proposal to annex unincorporated territory to a city and to enjoin the city from proceeding with the annexation, the trial court granted defendants' motion for summary judgment on the ground that quo warranto was the only means by which the validity of the annexation could be tested inasmuch as the annexation had been completed before the mandate proceeding was instituted. The association challenged the annexation on grounds of failure to comply with the requirements of the Environmental Quality Act (Pub. Resources Code Code, § 21000 et seq.) and the Knox-Nisbet Act (Gov. Code, § 54773 et seq.). (Superior Court of Orange County, No. 297459, H. Walter Steiner, Judge.)

The Court of Appeal affirmed, holding that the only method of testing the validity of the completed annexation, whatever the basis for the challenge, was either an in rem action in compliance with the validating statute (Code Civ. Proc., § 860, et seq.) or a quo warranto proceeding by the Attorney General. (Opinion by Tamura, J., with Gardner, P. J., and Kaufman, J., concurring.)

[Civ. No. 14770. Fourth Dist., Div. One. May 11, 1978.]

THE PEOPLE ex rel. EVELLE J. YOUNGER, as Attorney General, etc., Plaintiff and Respondent, v. LOCAL AGENCY FORMATION COMMISSION OF SAN DIEGO COUNTY, Defendant and Appellant; BORDER AREA CITIZENS FOR DEANNEXATION et al., Interveners and Appellants.

CITY OF SAN DIEGO, Plaintiff and Respondent, v. LOCAL AGENCY FORMATION COMMISSION OF SAN DIEGO COUNTY, Defendant and Appellant; BORDER AREA CITIZENS FOR DEANNEXATION et al., Interveners and Appellants.

SUMMARY

The State of California and the City of San Diego sought a writ of mandate to compel the Local Agency Formation Commission of San Diego County (LAFCO), to set aside its negative declaration and to prepare an environmental impact report before further proceedings in connection with a deannexation petition. LAFCO had determined, contrary to staff recommendations, the deannexation petition was only a change in governmental administration and would not have any significant impact on the environment. LAFCO contended the petition was a submittal of a proposal to a vote of the people (title 14, Cal. Admin. Code, § 15037, subd. (b)(4)), and was thus not a project. The superior court issued a peremptory writ of mandate. (Superior Court of San Diego County, Nos. 366231 and 366031, Jack R. Levitt, Judge.)

The Court of Appeal affirmed, holding substantial evidence supported the finding that the deannexation proposal was a project that may have significant impact on the environment and LAFCO, as the lead agency, was required to prepare the environmental impact report. (Opinion by Staniforth, J., with Brown (Gerald), P. J., and Cologne, J., concurring.)

[Civ. No. 14713. Fourth Dist., Div. One. Mar. 16, 1978.]

MORRO HILLS COMMUNITY SERVICES DISTRICT, Plaintiff and Respondent, v. BOARD OF SUPERVISORS OF SAN DIEGO COUNTY, Defendant and Appellant.

SUMMARY

A community services district filed a complaint for declaratory relief pursuant to Code Civ. Proc., § 860 et seq., against a county board of supervisors seeking a declaration that a proposed detachment of 74 acres from the district was invalid. The complaint alleged abuse of discretion by the county in adopting the detachment resolution. The trial court concluded the board of supervisors had no authority to order detachment of property from the community services district subject to a condition relieving the property from the obligation of existing bonded indebtedness unless it reallocated the obligation to an affected city, county, or district. The trial court held the detachment, as conditioned, invalid. (Superior Court of San Diego County, No. 3068-N, Charles W. Froehlich, Jr., Judge.)

The Court of Appeal reversed. The court held there was substantial evidence submitted to the board of supervisors to support its action in ordering detachment of the property from the community services district subject to the condition relieving the property from the obligation of existed bonded indebtedness. The court held, in light of the provisions of the District Reorganization Act (Gov. Code, § 56000 et seq.), such a conditional detachment was proper. The court further held it was reasonable and not an abuse of discretion for the board of supervisors to free the detached property of the obligation to pay the community services district bonds. The bonds were sold to provide funds to construct roads but did not provide access specifically to the detached property; the detached property represented only a small portion of the assessed value of the district; its exemption from liability for taxes for the bonds would have little impact on the taxing capacity of the district; and the detached property would be subject to liability and taxes to service the existing bonds of the city in which the detached property was placed. (Opinion by Cologne, J., with Brown (Gerald), P. J., and Staniforth, J., concurring.)

Opinion (*Bakersfield Community Hospital* v. *Department of Health*) on pages 373-380 omitted.

MODIFIED AND REPRINTED
See 77 Cal.App.3d 193.

[Civ. No. 38178. First Dist., Div. One. Jan. 3, 1978.]

CITY OF SANTA CRUZ, Plaintiff and Appellant, v.
LOCAL AGENCY FORMATION COMMISSION OF SANTA CRUZ COUNTY, Defendant and Respondent;
CITY OF CAPITOLA et al., Real Parties in Interest and Respondents.

SUMMARY

The trial court denied the petition of a city for a writ of mandate to set aside the determination of a county agency formation commission approving annexation of land to a second city. The record indicated that in its proceedings, the commission had failed to make written findings of fact. It also indicated that the trial court in its consideration considered both the administrative record containing matters expressly presented at the annexation hearings and a much more extensive administrative record containing studies previously made by and for the commission. Finally, it indicated that the commission deleted a tax revenue sharing provision from its resolution approving the annexation upon finding that the provision was unlawful. (Superior Court of Santa Cruz County, No. 56772, Harry F. Brauer, Judge.)

The Court of Appeal affirmed. The court held that a local agency formation commission was not required by law to make written findings of fact upon annexation determinations, and that, thus, the lack of written findings of fact did not make the commission's proceedings fatally defective. The court also held that the trial court did not err in considering both the administrative record developed at the hearings and the more extensive administrative record which included previous studies by the commission. Furthermore, the court held that the absence of a commission member, who voted for the annexation determinations, from two of the several hearings did not invalidate the determinations. Finally, the court held that the deletion of the unlawful tax revenue sharing provision from the annexation resolution did not invalidate the resolution itself. (Opinion by Elkington, J., with Racanelli, P. J., and Sims, J., concurring.)

[Civ. No. 39840. First Dist., Div. Three. Aug. 29, 1977.]

FRIENDS OF MOUNT DIABLO et al., Plaintiffs and Appellants, v. COUNTY OF CONTRA COSTA et al., Defendants and Respondents; BLACKHAWK CORPORATION et al., Interveners and Respondents.

SUMMARY

Following a county board of supervisors' resolution approving a special district reorganization designed to facilitate a development project made possible by a rezoning ordinance, certain environmental groups sought a writ of mandate to compel a referendum on the reorganization or to repeal the resolution. On the ground that the board's resolution was an administrative, not a legislative, action, the trial court denied the writ. (Superior Court of Contra Costa County, No. 157446, Coleman F. Fannin, Judge.)

The Court of Appeal affirmed, noting that in reality petitioners were attacking the rezoning ordinance, which, itself unchallenged by referendum, had already been enacted into law. The court held that the referendum power does not extend to local situations in which the state's system of regulation over a matter of statewide concern is so pervasive as to convert the local legislative body into an administrative agent of the state. It was in this capacity that the county board was acting, when, pursuant to the District Reorganization Act (Gov. Code, § 56000 et seq.), it approved the special district reorganization. (Opinion by Devine, J.,* with Scott, Acting P. J., and Good, J.,† concurring.)

*Retired Presiding Justice of the Court of Appeal sitting under assignment by the Chairperson of the Judicial Council.

†Retired judge of the superior court sitting under assignment by the Chairperson of the Judicial Council.

[Civ. No. 36536. First Dist., Div. Four. May 27, 1976.]

MORRISON HOMES CORPORATION, Plaintiff and Respondent, v. CITY OF PLEASANTON, Defendant and Appellant.

SUMMARY

The trial court entered judgment in favor of a real estate developer requiring a general law city to perform obligations, assumed by it in annexation agreements with the developer, to provide sewer connections for the homes to be built on the annexed tracts. The developer was also awarded accrued and ongoing damages for the city's breach of the obligations. Four of five agreements in issue were annexation agreements as such and the other modified the first three and had future application as to the capacity reserved by the city to provide adequate sewer services to the developer's lands annexed or to be annexed. The lands were developed as agreed and the sewer connections were provided until orders of the Regional Water Quality Control Board relating to violations of its waste discharge standards in connection with the city's sewage treatment plant interrupted the activity. Following an order of the board prohibiting any additional sewer connections to the treatment plant except on conditions requiring compliance with specified waste-discharge standards of the board, the city discontinued making new sewer connections available to the annexed tracts and the developer commenced its action on the annexation agreements. (Superior Court of Alameda County, No. 438779, Robert H. Kroninger, Judge.)

The Court of Appeal modified the judgment so as to clarify the requirement that the city satisfy the requirements of the water quality board which were necessary to accomplish the connection of the developer's properties to the sewer facilities and to the sewage treatment plant. The court held that the city's agreements with the developer were valid as municipal contracts authorized by law. In that connection it rejected contentions that the agreements were an invalid attempt to contract away the legislative and governmental functions of future city councils and that the obligations were unenforceable because the city council's actions in assuming them were ultra vires. The court further held that there was nothing in the agreements that could be interpreted as conflicting with the Knox-Nisbit Act (Gov. Code, § 54773 et seq.), which establishes a local agency formation commission in each county and vests it with broad discretionary powers to veto a municipal annexation within the county on application of the legislative purposes and guidelines stated in the act. Though the court held that the judgment as entered, considered with the trial court's findings and conclusions, mandated the city to perform the annexation agreements in compliance with the water quality board's order, it ordered the clarifying modification in that respect in deference to that board and the State Water Resources Control Board, both of which had joined in amicus curiae briefs filed by the Attorney General. (Opinion by Rattigan, J., with Caldecott, P. J., and Emerson, J.,* concurring.)

[Civ. No. 30324. First Dist., Div. 4. Oct. 7, 1975.]

TILLIE LEWIS FOODS, INC. et al., Plaintiffs and Respondents, v. CITY OF PITTSBURG et al., Defendants and Appellants: EL PUEBLO TENANTS COUNCIL et al., Interveners and Appellants.

SUMMARY

The trial court ordered issuance of a peremptory writ of mandate directing a city to terminate proceedings for the annexation of an area as "inhabited territory" pursuant to Gov. Code, § 35100 et seq. The territory consisted of 459 acres and about one-sixth of it, contiguous to the city, was comprised of a public housing project in which 175 registered voters resided and an uninhabited park, zoned residential and owned by the county housing authority. The remaining 400 acres were zoned heavy industrial and commercial and only 14 persons resided in that area. The county local agency formation commission adopted a resolution declaring that the territory proposed to be annexed was "inhabited" and approved the annexation proposal, which was subsequently approved by the voters residing in the territory. In the mandamus proceedings, instituted by two corporations with valuable industrial holdings in the area, the court concluded that the portion of the territory zoned and used as industrial land was not subject to annexation since it was uninhabited land, that it was separate and distinct from the portion of the territory zoned and used as residential land, and that the local agency formation commission did not have the power to declare such uninhabited land to be inhabited. (Superior Court of Contra Costa County, Nos. 123212, 123215, Norman A. Gregg, Judge.)

The Court of Appeal affirmed, holding that the provisions of Gov. Code, § 54773 et seq., setting forth the purposes and powers of LAFCO, may not be interpreted as having abrogated the rule that territory which is judicially determined to be "uninhabited" in fact, may not be annexed as an appendage to "inhabited" territory from which it is separable and distinguishable in fact. The court fully discussed the provisions of the Annexation Act of 1913 (Gov. Code, § 35100 et seq.) relating to "inhabited" territory, the Annexation of Uninhabited Territory Act of 1939 (Gov. Code, § 35300 et seq.), the act establishing a LAFCO in each county and setting forth its purposes and powers, as recodified in the Knox-Nesbit Act (Gov. Code, § 54773 et seq.), and applicable California decisions, and it held that there was nothing to indicate any legislative intent to give the local commissions the power to make a conclusive determination, not subject to judicial review, that territory is "inhabited" or "uninhabited" for the purpose of annexation proceedings. (Opinion by Rattigan, J., with Caldecott, P. J., and Christian, J., concurring.)

[Civ. No. 44715. Second Dist., Div. Three. Sept. 25, 1975.]

SIMI VALLEY RECREATION AND PARK DISTRICT et al., Plaintiffs and Appellants, v. LOCAL AGENCY FORMATION COMMISSION OF VENTURA COUNTY et al., Defendants and Respondents.

SUMMARY

The trial court entered judgment of dismissal after sustaining demurrers without leave to amend to all causes of action of a petition for a writ of mandate by which a recreation and park district and two residents and property owners within the district sought to nullify the determinations of the county local agency formation commission and the county board of supervisors approving and carrying out the detachment of some 10,000 acres of undeveloped land from the territory encompassed within the district. The detachment proposal was a part of an extensive planning effort by agencies in the county relating to the future development of a new community. After following procedures outlined by statute, the commission directed the recreation and park district to initiate proceedings to effect the detachment, but the district directors refused to consent thereto. The commission certified the district's refusal, pursuant to Gov. Code, § 56293, to the county board of supervisors for purposes of allowing it to initiate, conduct and complete detachment proceedings consistent with the commission's resolution. (Superior Court of Ventura County, No. SP 47284, Jerome H. Berenson, Judge.)

The Court of Appeal affirmed, rejecting the contention that the detachment was a "project" requiring the filing of an environmental impact report. The court held that the Environmental Quality Act was totally inapplicable under the circumstances. It pointed out that the district had failed to attack the commission's determination within the time provided by statute, and that the action of the board of supervisors was purely ministerial and thus exempt from the requirements of the act. Delegation of legislative power to local agency formation commissions by the District Reorganization Act (Gov. Code, §§ 56000-56550) was held constitutional, and the court further held that the commission could constitutionally order the detachment without a vote of the residents of the remainder of the district. In conclusion the court held that the determinations of the commission and the board of supervisors were, as provided by Gov. Code, § 56006, reviewable only to determine if they were supported by substantial evidence. It was pointed out that the determinations were legislative rather than judicial, and that they did not substantially affect any fundamental vested right. (Opinion by Potter, J., with Cobey, Acting P. J., and Allport, J., concurring.)

[Civ. No. 1898. Fifth Dist. June 25, 1975.]

EDWIN N. BOOKOUT, Plaintiff and Respondent, v. LOCAL AGENCY FORMATION COMMISSION OF TULARE COUNTY et al., Defendants and Appellants.

SUMMARY

A city filed an application with a county Local Agency Formation Commission for approval to initiate proceedings to annex uninhabited territory, and the commission, pursuant to statute, published notice of the date, time and place of the hearing before the commission in a properly authorized newspaper. The notice contained a metes and bounds description of the exterior boundaries of the territory to be annexed. After the hearing, the commission, by resolution, approved the city's application, and the city thereafter on its own motion initiated proceedings to annex the territory in question without an election, as authorized by statute. In a mandate proceeding by one of the assessed owners within the territory sought to be annexed, the trial court granted a writ of mandate enjoining the city to desist from further proceedings of annexation, and ordered the commission to annul the resolution approving the annexation until plaintiff and all affected landowners, at a minimum, were notified by registered or certified mail, or if the letters should be returned, by posting the affected property, of any further proceedings affecting the property which might be brought before the commission. (Superior Court of Tulare County, No. 73084, John Michael Nairn, Judge.*)

The Court of Appeal reversed, holding that since the nature of the power exercised in adding new territory to municipal corporations is legislative and political rather than judicial, and since annexation does not deprive the owners of the annexed area of property or property rights in the constitutional sense, there are no constitutional demands of due process restricting the mode, nature and type of notice that must be given, and that the procedural requirements for conduct of annexation proceedings by the Local Agency Formation Commission and the city thus stem solely from statute. The court further held that Gov. Code, § 54793, providing for notice in annexation proceedings, required no more than placing in the published notice a metes and bounds description of the exterior boundaries of the area to be annexed, and noted that written notice was required to be given to the assessed owners of the land of the hearing on the city's resolution to annex, so that should the proceedings go forward, affected landowners would have actual notice and an opportunity to be heard before the body whose action would in fact result in the annexation of the property before that action was taken. (Opinion by Brown (G. A.), P. J., with Gargano and Franson, JJ., concurring.)

*Assigned by the Chairman of the Judicial Council.

[L.A. No. 30307. In Bank. Jan. 7. 1975.]

RICHARD BOZUNG et al., Plaintiffs and Appellants, v.
LOCAL AGENCY FORMATION COMMISSION OF VENTURA COUNTY et al., Defendants and Respondents;
KAISER AETNA, Real Party in Interest and Respondent;
CITY OF THOUSAND OAKS, Intervener and Respondent.

SUMMARY

In an action grounded in mandamus and declaratory relief, a city's annexation ordinance was challenged on the basis, among others, of the Local Agency Formation Commission's approval of the ordinance without preparing an environmental impact report in conformance with the Environmental Quality Act (Pub. Resources Code, § 21000 et seq.). Demurrers to the complaint were sustained without leave to amend and judgment went for defendants. (Superior Court of Ventura County, No. SP 46856, Richard C. Heaton, Judge.)

The Supreme Court reversed with directions for the issuance of a writ of mandate by the trial court under specified conditions. The reviewing court characterized the core of the litigation as resolution of the issue of the relationship between the Environmental Quality Act and the Knox-Nisbet Act (Gov. Code, § 54773 et seq.), relating to Local Agency Formation Commissions. Preliminarily, the court concluded that although the case was not a proper subject of a class action, the named plaintiffs did have standing to bring the action and to challenge the ordinance. With regard to the relationship between the two acts, the court held that the commission is a governmental agency to which the Environmental Quality Act addresses itself, and that before acting on the annexation, it should have addressed itself to environmental considerations in accordance with the Environmental Quality Act, in the light of the fact that it seemed clear beyond a reasonable doubt that the commission's approval, if given, could have a significant effect on the environment. Accordingly, it was held that it had been error to sustain the demurrer to the cause grounded on the theory that the Local Agency Formation Commission's approval was subject to the requirements of the Environmental Quality Act and that the commission had violated its duty thereunder in failing to prepare an environmental impact report. (Opinion by The Court. Separate dissenting opinion by Clark, J.)

[Civ. No. 34720. First Dist., Div. One. July 17, 1974.]

JOHN L. LEVINSOHN et al., Petitioners, v.
CITY OF SAN RAFAEL et al., Respondents.

SUMMARY

On the petition, as a class, of registered voters and residents of an unincorporated area, the Court of Appeal ordered issuance of a peremptory writ of mandate determining that Gov. Code, § 35121, providing that further proceedings shall not be taken by a city on an annexation petition if protest is made by the owners of more than one-half of the value of the territory sought to be annexed, and Gov. Code, § 35121.1, setting forth the procedure in case of a majority protest, are unconstitutional, and compelling a city to resume proceedings for the annexation of the unincorporated area. The petitioners and other residents and registered voters of the unincorporated area had initiated and pursued required procedures seeking annexation, but the city council determined that a majority protest against annexation had been made by persons owning 50 percent or more of the assessed value of the land within the area, and annexation proceedings were deemed terminated. The court declared the statutes constitutionally infirm as denying the petitioners equal protection of the law under both the California and the federal Constitutions. It based its holding on a recent California Supreme Court decision concluding that a similar incorporation protest statute served no compelling state interest by allocating power within the landowners' group on the basis of assessed value of land. The court took the view that nonlandowners share an equal interest with landowners in the annexation of the area in which they reside to an existing city as they share an equal interest in the formation of a city. (Opinion by Molinari, P. J., with Sims and Elkington, JJ., concurring.)

[Civ. No. 1509. Fifth Dist. Oct. 29, 1973.]

ROBERT K. MEYERS et al., Plaintiffs and Appellants, v. LOCAL AGENCY FORMATION COMMISSION OF TULARE COUNTY et al., Defendants and Appellants; CITY OF VISALIA, Defendant and Respondent.

SUMMARY

The trial court denied a petition in administrative mandamus by residents of an area sought to be annexed by a city. Plaintiffs sought annulment of two resolutions of the county local agency formation commission approving the annexations. The area involved was an "island" surrounded by the city and the city had filed two separate applications for approval, dividing the territory so that there would be less than 12 registered voters in each part and so that the assessed value of county-owned property in each part exceeded the assessed value of privately owned property. The commission had refused to make findings on the contention of the residents that the city had manipulated the boundaries of a single area into two areas for the purpose of depriving the residents therein of their right to vote on the annexation proposals. (Superior Court of Tulare County, No. 69132, William P. Clark, Jr., Judge.*)

The Court of Appeal affirmed, holding that the petition was premature as to the city, although it appeared that the proceedings had been undertaken with the intent of arbitrarily manipulating the boundaries of the proposed annexation for the purpose of circumventing the legislative classification between inhabited and uninhabited territory. It was pointed out that the commission's approval was not binding and that the proposed annexation might be abandoned, or defeated by the protests of property owners. The court took the view that the commission had properly refused to rule on the claim of manipulation, and it rejected a contention that two county supervisor members of the commission should have disqualified themselves. (Opinion by Brown (G. A.), P. J., with Franson, J., concurring.)

*Assigned by the Chairman of the Judicial Council.

[L.A. No. 30099. In Bank. Sept. 4, 1973.]

NELSON E. WEBER et al., Plaintiffs and Appellants, v. CITY COUNCIL OF THOUSAND OAKS et al., Defendants and Respondents; LARRY SADE, Intervener and Respondent.

SUMMARY

Land, including land owned by plaintiffs, the only residents of the territory involved, was, except for the final act of filing, annexed to a city as "uninhabited" territory under the Annexation of Uninhabited Territory Act of 1939 (Gov. Code, §§ 35300-35326) without requiring an election to approve the annexation such as would have been required had the proceedings been under the Annexation Act of 1913 (Gov. Code, §§ 35100-35158.) The trial court denied plaintiffs' application for a writ of mandate to compel the city to terminate the annexation proceedings. (Superior Court of Ventura County, No. SP 46591, Richard C. Heaton, Judge.)

The Supreme Court affirmed. Basically, plaintiffs contended on appeal that their due process and equal protection rights were violated as a result of the fact that the 1939 act does not afford the residents an opportunity to vote, whereas the 1913 act does. As a prelude to its resolution of the issue of the validity of the distinctions made between the two statutes, the court concluded that the traditional, rather than the "strict scrutiny," standard was applicable to the situation. Noting that the traditional standard requires merely that the challenged statutory distinction bear some reasonable relationship to a legitimate state end, and that the two acts are based on different concepts, the court held that the definition in the 1939 act of "uninhabited territory" as territory containing fewer than 12 resident registered voters is sufficiently related to legislative purposes to satisfy equal protection requirements, and that, therefore, the distinctions drawn by the statutes did not violate plaintiffs' constitutional rights. (Opinion by Wright, C. J., expressing the unanimous view of the court.)

[Civ. No. 13535. Third Dist. July 18, 1973.]

DEL PASO RECREATION AND PARK DISTRICT et al., Plaintiffs and Appellants, v. BOARD OF SUPERVISORS OF SACRAMENTO COUNTY et al., Defendants and Respondents.

SUMMARY

After sustaining a demurrer without leave to amend, the trial court entered judgment dismissing an action by a recreation and park district and the president of its board of directors against a county board of supervisors and others, attacking the validity of a reorganization of recreation and park districts within a defined geographic area of the county under the District Reorganization Act of 1965 (Gov. Code, § 56000 et seq.). One of the results of reorganization was the detachment of a portion of plaintiff district and annexation of the detached area to another district. Following a public hearing on the resolution for reorganization adopted by the county Local Agency Formation Commission, the board of supervisors found that the number of landowners and voters filing protests was insufficient to require a confirmatory election, but it nevertheless declared a preference to submit the question of detachment of territory from plaintiff district to the voters of that district. However, the board subsequently reiterated its finding of the insufficiency of the protests and ordered consummation of the multiple reorganization without a confirmatory election. (Superior Court of Sacramento County, No. 212383, B. Abbott Goldberg, Judge.)

The Court of Appeal affirmed, holding that no election was required under the circumstances, and that the board's initial declaration of a preference to hold one did not create an estoppel in favor of plaintiff district. Further contentions relating to notice, a defect in description of the territory detached, lack of consent by the affected district, and alleged improper designation of the board of supervisors as the "conducting district" for the reorganization were found to be without merit. (Opinion by Janes, J., with Friedman, Acting P. J., and Regan, J., concurring.)

[L.A. No. 29873. In Bank. Sept. 19, 1972.]

GORDON M. CURTIS, JR., et al., Petitioners, v.
BOARD OF SUPERVISORS OF LOS ANGELES COUNTY et al., Respondents.

SUMMARY

In accordance with Gov. Code, § 34311, providing that on the filing of protests representing 51 percent of the total assessed valuation of land within the boundaries of a proposed new city, there shall be no election called with respect to the proposal, the board of supervisors refused to call an election upon the filing of protests representing over 55 percent of the assessed value of land, notwithstanding that the proposed incorporation was supported by petitions representing about 63.6 percent of the landowners within the proposed boundaries and about 42.8 percent of the assessed valuation of land. Those persons favoring the proposal sought mandate in the Supreme Court on the ground that the code section violates equal protection requirements.

Noting that the importance of the issues and the need for their prompt resolution called for the exercise of its original jurisdiction, the Supreme Court granted the writ, ordering resumption of incorporation proceedings. The court reviewed the decisions establishing the two-level test as to equal protection requirements for legislative classifications, the ordinary standard, under which the classification need bear only a rational relationship to a conceivable state purpose, and the strict test, applied to suspect classifications and those touching on fundamental interests, under which the state must establish not only a compelling interest, but a necessity for the distinctions drawn by the law. The court concluded that Gov. Code, § 3411, touches on, and burdens, the right to vote and is, therefore, subject to the strict test, and that it does not meet that test. Furthermore, the court declared that the statute is unconstitutional in part even under the liberal test in allocating power among the landowners in a manner which bears no rational relationship to any state interest. Holding, however, that the landowner veto segment was severable, the court left the valid parts of the statute in operation. (Opinion by Tobriner, J., expressing the unanimous view of the court.)

) [Civ. No. 1103. Fifth Dist. July 1, 1).]

CITY OF CERES et al., Plaintiffs and Appellants, v. CITY OF MODESTO et al., Defendants and Respondents.

[1] **Municipal Corporations—Alteration—Local Agency Formation Commission.**—A city may not annex territory unless the proposal to annex the territory is first submitted to and approved by the local agency formation commission of the county in which the city is located. (Gov. Code, §§ 35002, 54791).

[2] **Counties—County Boards—Local Agency Formation Commission.**—A local agency formation commission is a creature of the Legislature and has only those express or necessarily implied powers which are specifically granted to it by statute; it is a public entity created by legislative fiat, and is a body of special and limited jurisdiction.

[3] **Id.—County Boards—Local Agency Formation Commission.**—Local agency formation commissions were created by the Legislature for a special purpose: to discourage urban sprawl and to encourage the orderly formation and development of local governmental agencies; such a commission is the "watchdog" the Legislature established to guard against the wasteful duplication of services that results from indiscriminate formation of new local agencies or haphazard annexation of territory to existing local agencies.

[4] **Id.—County Boards—Local Agency Formation Commission.**—The extent of a local agency formation commission's power is to approve or disapprove wholly, partially or conditionally actual and precise proposals which are presented to it from time to time for its consideration, and it is not its function or purpose to establish tentative boundaries for local agencies in futuro.

[5] **Id.—County Boards—Local Agency Formation Commission.**—If a local agency formation commission had the power to establish tentative future boundaries for two adjoining cities, its action did not of itself deprive the cities of the power to extend municipal service into the contiguous unincorporated territory.

[6] **Municipal Corporations — General Powers — Extraterritorial Powers.**—A city is constitutionally empowered to furnish light, water, power, heat, transportation, telephone service or other means of communication to inhabitants outside its boundaries. (Cal. Const., art. XI, § 19.)

[7] **Id.—General Powers—Extraterritorial Powers.**—The power of a city to provide sewage disposal services is a municipal function of such magnitude that it is one of the few powers that a city may exercise outside of its territorial limits without express authorization.

[8] **Pleading—Demurrer to Complaint—Amendment After Demurrer Sustained—Rule Where Complaint Is Incapable of Amendment.**—A city did not and could not state a cause of action against another city for injunctive relief to prevent defendant city from preparing plans for the installation of a sewage disposal system under which proposed sewer trunklines would extend throughout the city and into an adjoining disputed unincorporated area, and the court properly sustained defendant's general demurrer to plaintiff city's cause of action without leave to amend, where the complaint was drawn on the theory that a local agency formation commission had the power to and did decide that plaintiff city was entitled to annex the unincorporated area at some time in the future and that its action deprived defendant city of the right to extend city services into that territory during the interim, inconsistent with the recognized power of a city to provide sewage disposal services outside its territorial limits.

[9] **Id.—Determination—Sustaining Without Leave to Amend.**—Where the facts are not in dispute, and the nature of plaintiff's claim is clear, but under substantive law no liability exists and no amendment would change the result, the sustaining of a demurrer without leave to amend is proper.

[10] **Municipal Corporations—Actions—Rights and Remedies of Citizens and Taxpayers—Injunction.**—The term "waste" as used in Code Civ. Proc., § 526a, providing that a citizen resident of any city may bring an action to obtain a judgment restraining and preventing any waste of the estate, funds, or other property of the city, means something more than an alleged mistake by public officials in matters involving the exercise of judgment or wide discretion.

[11] **Id.—Actions—Rights and Remedies of Citizens and Taxpayers—Injunction.**—Courts should not take judicial cognizance of disputes which are primarily political in nature nor attempt to enjoin every expenditure which does not meet with a taxpayer's approval; but a court must not close its eyes to wasteful, improvident and completely unnecessary public spending merely because it is done in the exercise of a lawful power.

[12] **Id.—Actions—Rights and Remedies of Citizens and Taxpayers—Injunction.**—*A city taxpayer might have been able to* state a cause of action for injunctive relief against a city, given an opportunity to do so, to prevent an unconscionable waste of city tax funds by construction of sewer lines in unincorporated territory, where it was conceivable that the city would derive no benefit of any kind from the installation of sewer lines in the unincorporated territory unless it was ultimately annexed, where the territory could not be annexed without approval of a local agency formation commission whose studies and action indicated that it was highly unlikely that it would approve the annexation in the foreseeable future, and where it was conceivable that proceedings to annex the territory to another city had or were about to commence and that the construction of permanent sewer lines by defendant city into the disputed territory would result in an unnecessary duplication of municipal services which would serve no useful purpose.

[13] **Id.—Actions—Rights and Remedies of Citizens and Taxpayers—Injunction.**—If a city proposed to install permanent sewer lines in a disputed unincorporated area as to which another city's formal proposal to annex the territory had been presented to and approved by the county's local agency formation commission, not in a good-faith attempt to serve the residents of the area but to thwart the local agency formation commission and defeat the annexation, this would not only constitute "waste," but would be an illegal expenditure which could be enjoined by a citizen resident under Code Civ. Proc., § 526a.

[14] **Id.—Alteration—Annexation—Power of Legislature.** — The Legislature, by the adoption of appropriate legislation, has the exclusive power to regulate the formation of new cities and the annexation of territories to existing cities and therefore has the power to delegate to a local agency formation commission the responsibility of approving annexation proposals in order to insure the orderly development of cities and to prevent wasteful duplication of municipal services.

[15] **Id.—General Powers—Extraterritorial Powers.**—If a city's sole purpose in extending its sewer lines into adjoining disputed unincorporated territory was to defeat the legislative scheme in a matter over which the Legislature had exclusive jurisdiction of requiring annexation approval by the county's local agency formation commission, the city could not successfully maintain that it was merely exercising an inherent power to extend sewage disposal services outside of its boundaries.

[Civ. No. 25108. First Dist., Div. Two. May 21, 1969.]

SAN MATEO COUNTY HARBOR DISTRICT, Plaintiff and Appellant, v. BOARD OF SUPERVISORS OF SAN MATEO COUNTY et al., Defendants and Respondents.

[1] **Waters—Harbor Districts.**—Proceedings for the dissolution of a county harbor district were invalid, where the minutes of the County Local Agency Formation Commission and a letter transmitting the commission's resolution to the county board of supervisors showed that the commission did not fulfill the duty imposed upon it by the Legislature (Gov. Code, § 56000 et seq.) of making its own independent determination relative to the advisability of dissolving the harbor district and that it chose, on the contrary, to leave the question unresolved and to pass it on to the county board of supervisors for decision, and where both the minutes and the letter of transmittal indicated that the members of the commission had serious doubts about dissolving the district and that the resolution which purportedly approved the dissolution was utilized solely as a means by which the commission could, in effect, delegate its decision-making powers to the board of supervisors.

[Civ. No. 19123. First Dist., Div. Two. Nov. 2, 1960.]

CITY OF CUPERTINO, Appellant, v. CITY OF SAN JOSE et al., Respondents.

[1] **Municipal Corporations—Annexation of Uninhabited Territory.**—When a city council has initiated proceedings to annex uninhabited territory, no proceeding can be instituted by the legislative body of any city for annexation of such territory. (Gov. Code, § 35308.)

[2] **Id.—Annexation of Territory in Process of Annexation.**—The first annexation proceeding in point of time excludes the jurisdiction of a later one, and such second proceeding is an absolute nullity and is void.

[3] **Id.—Annexation—Time to Bring Second Proceeding.**—An annexation proceeding which is null and void is so from the beginning and is generally ineffectual for all purposes, and it does not bar a second proceeding by the same annexing city.

[4] **Id.—Annexation—Time to Bring Second Proceeding.**—Where a city's first annexation proceeding covering certain land was void because it was commenced during the pendency of another city's annexation proceeding covering the same land, a second proceeding brought less than a year later by the former city to annex the same land did not bring into operation the one-year waiting period imposed by Gov. Code, § 35007.

[5a, 5b] **Estoppel—Parties Affected—Estoppel Against the Public.**—A municipal corporation was not estopped to assert the invalidity of an annexation proceeding instituted by it where the elements of reliance and injury were lacking.

[6] **Id.—Parties Affected—Estoppel Against the Public.**—Estoppel to raise the defense of want of power cannot be asserted against a municipal corporation.

[7] **Municipal Corporations—Annexation—Commencement.**—Submission of an annexation proposal by a city to a county boundary commission did not constitute commencement of an annexation proceeding within the meaning of the law.

[8] **Id. — Annexation — Determination of Validity.** — Gov. Code, § 35009, providing that greenbelted land "shall not . . . be annexed to a city . . . without the consent of the owners" thereof does not specify that the consent required therein is a prerequisite to initiation of annexation proceedings, nor is any such requirement stated in the statutes providing for institution of such proceedings (Gov. Code, §§ 35005, 35010), and failure of an annexation proposal covering such land to include consent of the owners thereof did not invalidate it, consent being a prerequisite to completion, rather than commencement of proceedings.

[L. A. No. 24796. In Bank. Oct. 24, 1958.]

THE PEOPLE ex rel. JOHN AVERNA et al., Appellant, v. CITY OF PALM SPRINGS, Respondent.

[1] **Municipal Corporations—Annexation—Validity.** — Quo warranto lies to attack a completed annexation proceeding.

[2] **Quo Warranto—Pleading.**—A complaint in quo warranto is sufficient if it charges the usurpation of a franchise in general terms.

[3a, 3b] **Id. — Burden of Proof: Pleading — Demurrer.** — If the pleader in quo warranto sets out the specific facts relied on to show a usurpation, he assumes the burden of allegation and proof, and the complaint is subject to general demurrer if those facts do not state a cause of action. If plaintiff does not contend that any additional grounds are available, it is not error to deny leave to amend.

[4] **Id.—Pleading.**—A request that existing rules be revised to require specific allegations in all cases where a quo warranto action is brought on relation of private parties should be addressed to the Legislature, not the Supreme Court.

[5] **Municipal Corporations—Annexation of Uninhabited Territory —Pleading.**—In a proceeding in quo warranto to test the validity of annexation of uninhabited territory to a city, plaintiff's allegation that failure to serve a certain corporate landowner in the territory with written notice of its opportunity to protest the annexation deprived the city council of jurisdiction to annex the territory was fatally deficient, where plaintiff did not allege that the city failed to mail written notice to all other landowners in the annexed territory, that the requirements of Gov. Code, § 35311, for publication of notice were not observed, that the landowner did not acquire knowledge of the contents of the published notice, that the landowner did not appear at the hearing, that it desired to protest, or that its protest, if any, was not in fact considered.

[6] **Id.—Annexation of Uninhabited Territory—Notice and Hearing.**—Where the notice of hearing for annexation of uninhabited territory to a city specified that the council would hear and determine "all written protests filed with the City Council prior to the hour" set for hearing, no complaint could be made of the adequacy of the notice if the city was justified in refusing to entertain protests not submitted in the form and at the time specified.

[7] **Id.—Annexation of Uninhabited Territory—Protests.**—Gov. Code, § 35312, declaring that at any time "before" the hour set for hearing objections to annexation of uninhabited territory to a city any owner of property within the territory may file "written" protest, means that only written protests filed before the hour set for hearing need be considered; the word "may" is permissive only to the extent that no one is required to file a protest.

[8] **Real Property—Definitions.**—"Land" means "the solid material of the earth" (Civ. Code, § 659), and its value does not include the value of improvements thereon.

[9] **Municipal Corporations—Annexation of Uninhabited Territory—Protests.**—The 1955 amendment of Gov. Code, § 35313, relating to protests against annexation of uninhabited territory to a city, so as to state specifically that "value of the territory" means value of the land and improvements thereon, was merely declaratory of existing law, and the city council did not err in making its determination, prior to the effective date of such amendment, on the basis of value of both land and improvements.

[10] **Id.—Annexation of Uninhabited Territory—Reasonableness.**—An annexation of uninhabited territory to a city which violates no express statutory limitation restricting shape, extent or character of the annexed territory is not void for unreasonableness merely because it is alleged that the topography of the annexed land makes it impossible of urban development, that its size is out of all proportion to the city's needs, that part of the territory is included in a national forest, and that the land will not benefit by inclusion within the city, the permissible shape, character or extent of the territory annexed being a political question.

[11] **Id.—Annexation of Uninhabited Territory—Validity.**—An annexation of uninhabited territory to a city was not void as a fraudulent abuse of the authority conferred by statute where there was no allegation of violation or evasion of any statutory provision relating to the determination of the land to be annexed. An assertion that the city council assigned a false reason for annexing the territory and an indefinite allegation that the real reason was to subject the land to municipal taxes were conclusionary.

[12] **Id.—Annexation of Uninhabited Territory—Validity.**—The motives of a city council in seeking annexation of uninhabited territory to the city cannot be inquired into so long as it proceeded according to established law.

[13] **Id.—Organization—Boundaries.**—No one has a vested right to be either included or excluded from a local governmental unit, and the fixing of territorial boundaries of a municipal corporation will not ordinarily constitute an invasion of federal constitutional rights.

[14] **Id.—Annexation of Uninhabited Territory—Validity.**—The rule that special taxing districts can confer but one readily ascertainable benefit peculiarly advantageous to property within the district and that, if such benefit does not accrue to particular land, an assessment of that land to finance the improvements amounts to a taking of property without due process of law, does not apply with respect to municipal corporations whose advantages are general and varied, including the legally presumed intangible benefits resulting from the privilege of being part of an organized community, and hence an annexation to a city of uninhabited territory which assertedly benefits neither the land nor its owners will not amount to a taking of property without due process of law.

[15] **Id. — Annexation of Uninhabited Territory — Burdens and Benefits.**—Where the burden which a complaining property owner anticipates from an annexation of uninhabited territory to a city is that of a general ad valorem property tax imposed to support the local government, it is not necessary that any special benefit accrue to the land by reason of the annexation.

[16] **Taxation—Validity: Uniformity.**—The validity of a city ad valorem tax does not depend on the receipt of some special benefit as distinguished from the general benefit to the community; it is constitutionally sufficient if the tax is uniform and for public purposes in which the whole city has an interest.

[17] **Municipal Corporations—Annexation of Uninhabited Territory—Taxation.**—The performance of such ordinary municipal services as police and fire protection within the existing boundaries of a city together with the prospect that the city, consistent with its own interests and declared intent, will extend those services to uninhabited territory annexed to the city, will justify the imposition of taxes and be sufficient to satisfy the due process clauses of the state and federal Constitutions.

[Civ. No. 5734. Fourth Dist. Nov. 26, 1958.]

CITY OF COSTA MESA, Respondent, v. CITY OF NEWPORT BEACH et al., Appellants.

[Civ. No. 5735. Fourth Dist. Nov. 26, 1958.]

CITY OF NEWPORT BEACH, Appellant, v. CITY OF COSTA MESA et al., Respondents.

[1] **Municipal Corporations—Annexation Proceedings—Priorities.**—Where there is a conflict between proposed annexations, the proceeding first instituted has priority.

[2] **Id.—Annexation Proceedings—Institution.**—A proceeding to annex inhabited territory (Gov. Code, §§ 35100-35158) is instituted by resolution of the interested legislative body, acknowledging compliance with prescribed preliminary requirements and approving circulation of a petition, and the adoption of such a resolution confers exclusive jurisdiction to annex the subject territory for a period of 50 days (Gov. Code, § 35113).

[3] **Id.—Annexation Proceedings—Priorities.**—Where one municipality adopted a resolution to annex inhabited territory under the Annexation Act of 1913 (Gov. Code, §§ 35100-35158) at a city council meeting sometime after 7:30 p. m. of a certain day and another municipality, at exactly 7:30 p. m. of the same day, adopted a resolution referring a proposal to annex a portion of such property under the Uninhabited Territory Act of 1939 (Gov. Code, §§ 35300-35321) to the county boundary commission, the annexation proceedings instituted by the former city had priority over those of the latter, since the submission of the annexation proposal to the county boundary commission was preliminary only and did not institute annexation proceedings, while Gov. Code, § 35113, provides that for 50 days after adoption of a resolution to annex inhabited territory no petition may be filed with and no proceeding instituted by the legislative body of any municipality for the annexation of any such territory.

[4a, 4b] **Id. — Annexation Proceedings — Inhabited Territory.**—A finding that a certain area, as a unit, constituted inhabited territory within the Annexation Act of 1913 (Gov. Code, §§ 35100-35158) was proper, although a portion of such area qualified as uninhabited territory for annexation purposes (Gov. Code, § 35303), where there were residences within such included portion and there was no distinct dividing line, either natural or artificial, segregating the two areas.

[5] **Id.—Annexation Proceedings—Annexation Act of 1913.**—The fact that portions of a territory are uninhabited does not preclude its annexation under the Annexation Act of 1913 (Gov. Code, §§ 35100-35158).

[6] **Id.—Annexation Proceedings—Annexation Act of 1913.**—Proceedings under the Annexation Act of 1913 (Gov. Code, §§ 35100-35158) are proper if the territory proposed to be annexed, taken as a whole, fairly may be said to be inhabited.

[7] **Id.—Annexation Proceedings—Annexation Act of 1913.**—Before the existence of uninhabited portions of an area may preclude annexation of the whole territory as inhabited under the Annexation Act of 1913 (Gov. Code, §§ 35100-35158), the uninhabited portions must be separable, independent and distinguishable from the main inhabited portions.

[8] **Id.—Annexation Proceedings—Annexation Act of 1913.**—What constitutes such a separable, independent and distinguishable uninhabited area as will preclude annexation of a territory as inhabited land is a question of fact.

[9] **Id.—Annexation Proceedings — Annexation Act of 1913.**—A pertinent consideration in determining the existence of a separable, independent and distinguishable uninhabited area that will preclude annexation of a larger territory as inhabited land is the existence or nonexistence of a dividing line clear enough to constitute a basis for distinguishing with reasonable clarity and certainty between the inhabited and uninhabited areas.

Local Agency Formation Commission
STAFF REPORT

Agenda of September 28, 2005

AGENDA ITEM 8D: EXECUTIVE OFFICER REPORT

The past month's accomplishments include the initiation of six new LAFCO proposals. Adequate staffing continues as the major challenge. Securing interim staffing arrangements, training and supervising the people involved, is a high priority and is time consuming. I am working aggressively to ensure our accounting staff close FY 04-05 and compile the final budget report for that year. In addition, I am working with Counsel to resolve some confidential personnel issues related to Susan Stahmann. I am training the new temp to take over more of Susan's duties along with her principal assignment to convert our templates and merge documents into Word format. Several Commissioners attended the CALAFCO conference where I made a presentation on how to write and use staff reports, titled "Fourteen Factors: Making Better Decisions".

1. Administration

1. The part-time Office Assistant, Wendy Cortade, has found full time employment elsewhere. Carrie Rassmussen, a highly skilled secretary from Blue Ribbon Temps is covering general office operations and is training for more responsibility.
2. The accounting staff has converted payroll reporting to be directly integrated with Quickbooks. This will be a significant improvement over the stand-alone system set up at the beginning of the year.
3. I continue to recruit for the Executive Officer position, and talk to prospective applicants. We have received some applications, and the final filing deadline is September 30th.

2. Research and Advisory

1. Provided staff support to Chairman Manard regarding agency and internal issues
2. Compiled and reviewed information for the Housing Study Session
3. Reviewed records and assisted in research regarding legal issues for Consumnes River CSD and Springfield Meadows CSD.

3. Proposals and Projects

1. Consulted with applicants/landowners for pre-application review of 5 prospective new projects.
2. Revised and updated the project initiation merge documents and initiated the AB-8 property tax redistribution negotiations for 6 new proposals. I researched and resolved problems with two proposals which will need to be recirculated pending county notification to do so.

LAFCO
Balance Sheet
As of June 30, 2005

	Jun 30, 05	Jun 30, 04	$ Change
ASSETS			
Current Assets			
Checking/Savings			
Petty cash	258.85	20.00	238.85
Western Sierra Bank	29,950.59	0.00	29,950.59
Incorporation - EDH 03-10	21,710.12	0.00	21,710.12
Money Market			
State Board of Equalization	2,568.14	0.00	2,568.14
Money Market - Other	209,797.80	139,029.29	70,768.51
Total Money Market	212,365.94	139,029.29	73,336.65
Office General	147.86	127.23	20.63
Cash in County Treasury	0.00	52,581.75	-52,581.75
Payroll Clearing Account	5,657.03	0.00	5,657.03
Total Checking/Savings	270,090.39	191,758.27	78,332.12
Other Current Assets			
Prepaid expenses	5,100.00	5,234.00	-134.00
Total Other Current Assets	5,100.00	5,234.00	-134.00
Total Current Assets	275,190.39	196,992.27	78,198.12
Fixed Assets			
Leasehold Improvements	6,400.00	6,400.00	0.00
Office Equipment	14,030.48	10,438.00	3,592.48
Accumulated depr - Leasehold	-427.00	-427.00	0.00
Accumulated Depr - Office Equip	-7,559.00	-7,559.00	0.00
Total Fixed Assets	12,444.48	8,852.00	3,592.48
TOTAL ASSETS	**287,634.87**	**205,844.27**	**81,790.60**
LIABILITIES & EQUITY			
Liabilities			
Current Liabilities			
Accounts Payable			
Accounts Payable	79,572.60	2,349.50	77,223.10
Total Accounts Payable	79,572.60	2,349.50	77,223.10
Other Current Liabilities			
Deferred comp payable	800.00	0.00	800.00
Accrued Salaries Payable	7,990.27	10,688.41	-2,698.14
Leave Benefits	30,810.53	0.00	30,810.53
Payroll Liabilities			
CalPERS Retirement	33.48	0.00	33.48
LT Care Benefits	455.70	0.00	455.70
457 Plan Payable	7,938.36	0.00	7,938.36
Total Payroll Liabilities	8,427.54	0.00	8,427.54
Retiree Health Fund	7,521.00	0.00	7,521.00
SBE Trust Fund	1,268.14	0.00	1,268.14
Total Other Current Liabilities	56,817.48	10,688.41	46,129.07
Total Current Liabilities	136,390.08	13,037.91	123,352.17
Total Liabilities	136,390.08	13,037.91	123,352.17
Equity			
Fund Balance	192,806.36	53,749.84	139,056.52
Fund Balance to Current Year	-164,337.03	0.00	-164,337.03
Net Income	122,775.46	139,056.52	-16,281.06
Total Equity	151,244.79	192,806.36	-41,561.57
TOTAL LIABILITIES & EQUITY	**287,634.87**	**205,844.27**	**81,790.60**

LAFCO
Profit & Loss Budget vs. Actual
July 2004 through June 2005

	Jul '04 - Jun 05	Budget	$ Over Budget	% of Budget
Ordinary Income/Expense				
Income				
Fees	98,198.63	25,000.00	73,198.63	392.8%
Fees - Other	1,637.30			
Fund Balance from 03-04	164,337.03	164,337.03	0.00	100.0%
Revenue - Agency Payments	291,022.00	291,022.00	0.00	100.0%
Revenue Interest	4,558.80	2,000.00	2,558.80	227.9%
Total Income	559,753.76	482,359.03	77,394.73	116.0%
Expense				
03 - Fees	35.00			
00 - Deferred Comp Match	800.00	800.00	0.00	100.0%
00 - Employees Wage - Regular	197,122.64	179,936.28	17,186.36	109.6%
00 - Employee Wage - Temporary	9,754.43	12,700.00	-2,945.57	76.8%
00 - Employee Wage - Overtime	2,188.11	1,000.00	1,188.11	218.8%
00 - Flex Benefits	0.00	4,500.00	-4,500.00	0.0%
00 - Health Insurance	3,473.37	29,720.00	-26,246.63	11.7%
00 - Retirement - CALPERS	30,023.15	29,625.27	397.88	101.3%
00 - In-Lieu Health Insurance	2,758.40	4,500.00	-1,741.60	61.3%
00 - Payroll Tax - Medicare	2,778.97	2,609.06	169.91	106.5%
00 - Payroll Tax - O.A.S.D.I.	869.73			
00 - Payroll Tax - SUI/ETT	25.76	1,079.60	-1,053.84	2.4%
00 - Payroll Tax - FUTA	0.00			
02 - Employee Disability Ins	1,029.14	899.66	129.48	114.4%
02 - Workers Comp Insurance	2,783.00	2,470.00	313.00	112.7%
02 - Gen. Liability Insurance	8,877.50	4,200.00	4,677.50	211.4%
03 - Information Services	5,669.71	6,000.00	-330.29	94.5%
03 - Accounting Services	723.54	4,500.00	-3,776.46	16.1%
03 - Annual Audit	3,000.00	4,500.00	-1,500.00	66.7%
03 - Cell & Telephone Services	3,313.56	3,568.28	-254.72	92.9%
03 - Copies	2,256.13	400.00	1,856.13	564.0%
03 - GIS Maps	7,173.00	2,000.00	5,173.00	358.7%
03 - Lease Payment - Building	14,874.00	14,868.00	6.00	100.0%
03 - Legal Notices	559.70	300.00	259.70	186.6%
03 - Legal Services	24,972.60	24,000.00	972.60	104.1%
03 - Memberships	881.00	550.00	331.00	160.2%
03 - Memberships - CALAFCO	0.00	2,070.00	-2,070.00	0.0%
03 - Office Equipmment	0.00	500.00	-500.00	0.0%
03 - Office Expense	2,709.88	1,500.00	1,209.88	180.7%
03 - Operating Contingency	0.00	17,508.63	-17,508.63	0.0%
03 - Payroll Service	422.57	1,039.00	-616.43	40.7%
03 - Postage	1,462.63	720.00	742.63	203.1%
03 - Private Auto Mileage	2,352.25	2,420.00	-67.75	97.2%
03 - Professional Services	27,579.13	71,825.00	-44,245.87	38.4%
03 - Publications	263.49	674.00	-410.51	39.1%
03 - Records Storage	0.00	761.00	-761.00	0.0%
03 - Rental Vehicles	0.00	500.00	-500.00	0.0%
03 - Rents/Leases-Equipment	777.65	1,867.00	-1,089.35	41.7%
03 - Staff Development	5,311.88	5,029.00	282.88	105.6%
03 - Stipends	4,700.00	4,800.00	-100.00	97.9%
03 - Transportation	578.40	750.00	-171.60	77.1%
Accrued Leave	30,248.93	30,248.93	0.00	100.0%
Future Retirement	7,521.00	3,996.00	3,525.00	188.2%
Refunds	0.00			
Total Expense	409,870.25	480,934.71	-71,064.46	85.2%
Net Ordinary Income	149,883.51	1,424.32	148,459.19	10,523.2%
Other Income/Expense				
Other Income				
Incorporation Fees	333,820.58			
Total Other Income	333,820.58			

LAFCO
Profit & Loss Budget vs. Actual
July 2004 through June 2005

	Jul '04 - Jun 05	Budget	$ Over Budget	% of Budget
Other Expense				
Bank Charges Incorp	11.15			
Professional Services	360,917.48			
Total Other Expense	360,928.63			
Net Other Income	-27,108.05			
Net Income	**122,775.46**	**1,424.32**	**121,351.14**	**8,619.9%**

Meeting of September 28, 2005

I, Roseanne Chamberlain, Executive Officer, do declare that I notified the following persons/entities as noted below. Further,declare tl I either posted or caused to be posted the Notice of Hearing and/or Agenda of the Meeting shown above at the LAFCO Offices and Cou Buildings B and C on the Main Bulletin Boards on or before 5:00 p.m. on 9/20/05 (date). Note: Public Notice not required for any agenda items. RJC

RJChamberlain

Roseanne Chamberlain, Executive Officer, LAFCO

	AGENDA - (Double Sided - 7)	Meeting Date:	Mailed:	
X	Agenda File - LAFCO			
X	Chamberlain, Roseanne	LAFCO		
X	John Driscoll, City Mgr.	City of Placerville	487 Main Street emailed	Placerville, CA 95667
√		LAFCO		
X	Sacramento Bee	Folsom Bureau	1835 Prairie City Rd., Suite 500	Folsom, CA 95630
√	Stahmann, Susan	LAFCO	NA	
X	Tahoe Tribune	Editor	3079 Harrison Ave.	So. Lake Tahoe, CA 9615
X	*AGENDA* - (e-mailed)	see attached list	9/16	
	AGENDA (Single-Sided)			
√	Post- B, C & LAFCO (3)			
X	Agenda Item File	Districts for Budget		
X	Agenda Item Person	NA	emaild	
	PACKET (20) - Mailed			
√X	Allen, Nancy	Commission	P. O. Box 803	Georgetown, CA 95634
√	Chamberlain, Roseanne	LAFCO		
√X	Colvin, Roberta	LAFCO Commission	2854 Bennett Dr.	Placerville, CA 95667
√X	Costamagna, Gary	Commission	4100 Marble Ridge Road	El Dorado Hills, CA 9576
√X	Dupray, Rusty	Commission	Board of Supervisors	
√	~~Fratini, Corinne~~	LAFCO	NA	
√X	Gibson, Thomas	LAFCO Counsel	BBK 400 Capitol Mall, Ste 1650	Sacramento, CA 95814

√X	Hagen, Carl	LAFCO Commission	183 Placerville Dr.	Placerville, CA 95667
√X	Loftis, Francesca	Commission	7085 Nutmeg Lane	Placerville, CA 95667
√X	Long, Ted	LAFCO Commission	2498 Kubel Ave.	So. Lake Tahoe, CA 9615
√X	Manard, Aldon	Commission	3591 Coloma Canyon Rd.	Greenwood, CA 95635
√X	Paine, Richard C.	Commission	Board of Supervisors	
√X	Public Review Binder			
~~√~~	~~Stahlmann, Susan~~	~~LAFCO~~	NA	
√X	Sweeney, Jack	Commission	Board of Supervisors	
√	Wheeldon, George	Commission	EID-2890 Mosquito Road	Placerville, CA 95667
√X	Extra Copy for Meeting			
√	Stack, Noel	Mt. Democrat	1360 Broadway	Placerville, CA 95667
√X	Segel, Harriett	Mail	2067 Wood Mar Drive	El Dorado Hills, CA 9576
√X	Chief Larry Fry	EDH County Water Dist. (Mail)	990Lassen Lane	El Dorado Hills, CA 9576
	TOPICS - Mailed			
√	Conference Table (2 copies)			
√	Project Files	(none)		
√	Misc. Topics as Requested	(none) Steve Hurt, Greg Fry, Peter Maurer,		
	(Check proj. files)	Greg Chew, Joyce Aldrich, SLT)		emailed

Subject: LAFCO September Agenda
From: lafco <lafco@co.el-dorado.ca.us>
Date: Fri, 16 Sep 2005 10:41:37 -0700
To: Nancy Allen <wyomom@webtv.net>, Butch Arietta <Barietta57@aol.com>, Helen Baumann <bostwo@co.el-dorado.ca.us>, jbrillisour@co.el-dorado.ca.us, Scott Browne <scott@scottbrowne.com>, Roseanne Chamberlain <roseanne@co.el-dorado.ca.us>, Roberta Colvin <robbycolvin@hotmail.com>, Brian Cooper <bcooper@eid.org>, dcorcoran@eid.org, Gary Costamagna <pnjcosta@jps.net>, Don Davis <ddavis67@pacbell.net>, Ane <adeister@eid.org>, Rusty Dupray <bosone@co.el-dorado.ca.us>, Frank <fordcgg@pacbell.net>, John Fraser <jfraser@innercite.com>, Nat Taylor <ntaylor@lamphier-gregory.com>, Larry Fry <Larry@edhfire.com>, Georgetown Gazette <gazette@d-web.com>, Thomas Gibson <Thomas.Gibson@bbklaw.com>, Lori Grace <lgrace@eid.org>, Carl Hagen <chagen@d-web.com>, John Hidahl <John.Hidahl@ngc.com>, Dianna Hillyer <dhillyer@edhcsd.org>, Bob Hollis <rhollis@carnegiepartners.com>, Mindy Jackson <mjackson@innercite.com>, Bruce Lacher <c7700@directcon.net>, Francesca Loftis <floftis@CWnet.com>, Ted Long <tedtahoe@hotmail.com>, Wayne Lowery <wlowery@edhcsd.org>, Linda McDonald <LMcDonald@eid.org>, Jon Morgan <jmorgan@co.el-dorado.ca.us>, Sam Neasham <wneasham@neashamlaw.com>, George Osborne <gwclosborne@comcast.net>, Charlie Paine <bosfour@co.el-dorado.ca.us>, Rescue Fire <rescuefd@directcon.net>, Dan Russell <drussell@co.el-dorado.ca.us>, vsanders@co.el-dorado.ca.us, Harriett Segel <tuffi@innercite.com>, Dave Solaro <dsolaro@co.el-dorado.ca.us>, Noel Stack <nstack@mtdemocrat.net>, Jack Sweeney <bosthree@co.el-dorado.ca.us>, Michele Weimer <mweimer@eid.org>, Norb Witt <nwitt@sbcglobal.net>, Chris Word <cword@eid.org>, William Wright <billofwrights@sbcglobal.net>, Laura Gill <lsgill@co.el-dorado.ca.us>, Shawna Purvines <spurvines@co.el-dorado.ca.us>

Attached please find the agenda for our next meeting. Please enoourage interesed persons to attend our study session on housing in the County and cities of Placerville and South Lake Tahoe.
Roseanne Chamberlain
Executive Officer

05 September28 Agenda.wpd **Content-Type:** application/octet-stream
Content-Encoding: base64

05 September28 Agenda w.doc **Content-Type:** application/msword
Content-Encoding: base64