

**MEMORANDUM
COUNTY OF VENTURA
COUNTY COUNSEL'S OFFICE**

May 10, 2004

TO: Everett Millais, Executive Officer
Ventura Local Agency Formation Commission

FROM: Noel A. Klebaum, County Counsel

RE: ISLAND ANNEXATION POLICY

A relatively new policy of the Ventura Local Agency Formation Commission (LAFCO) states that LAFCO may, as a condition of approval of an annexation of 40 acres or more, require a city to initiate annexations of certain islands of unincorporated territory. (Ventura LAFCO Commissioner's Handbook ["Handbook"], § 3.2.3.) It has been suggested by some who are opposed to the policy that it is contrary to law. You have asked that we review the arguments against the policy and provide our opinion on whether the policy is valid. As is explained below, in our view the policy is consistent with the unambiguous statutory powers granted to LAFCO, and is therefore facially valid.

I. LAFCO'S QUASI-LEGISLATIVE AUTHORITY

We begin with the statutory underpinnings upon which the Ventura LAFCO has constructed its Handbook. LAFCOs are boundary commissions created by the Legislature to exercise the legislative branch's boundary authority over local governmental agencies within the statutory limits prescribed in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 ("CKH"). (Gov. Code, § 56000 et seq.) LAFCO's powers are distinguished from land use authority which is exercised by cities and counties under the Planning and Zoning Law. (Gov. Code, § 65000 et seq.)

LAFCOs were originally created by the Knox-Nisbet Act (former Gov. Code, §§ 54773-54863), which established in each county a local agency formation commission to control urban sprawl and to moderate the turf wars between cities, counties and special districts, as well as to encourage orderly growth and development through the logical determination of local agency boundaries.

“LAFCO was created by the Legislature for a special purpose, i.e., to discourage urban sprawl and to encourage the orderly formation and development of local governmental agencies. In short, LAFCO 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. . . .” (*City of Ceres v. City of Modesto* (1969) 274 Cal.App.2d 545, 553.)

In 1985, the Legislature consolidated the terms of the Knox-Nisbet Act, the District Reorganization Act of 1965, and the Municipal Organization Act of 1977 into the Cortese-Knox Local Government Reorganization Act of 1985 (Gov. Code, §§ 56000-57550). (*Fallbrook Sanitary Dist. v. San Diego Local Agency Formation Com.* (1989) 208 Cal.App.3d 753, 758-759.) Following extensive study, in 2000 the Legislature substantially revised the Cortese-Knox Act and renamed it the Cortese-Knox-Hertzberg Act. The policies the Legislature intends to implement through LAFCOs have, however, remained substantially constant since 1963. They are stated in Government Code section 56001¹:

“The Legislature finds and declares that it is the policy of the state to encourage orderly growth and development which are essential to the social, fiscal, and economic well-being of the state. The Legislature recognizes that the logical formation and determination of local agency boundaries is an important factor in promoting orderly development

“The Legislature finds and declares that a single multipurpose governmental agency is accountable for community service needs and financial resources and, therefore, may be the best mechanism for establishing community service priorities especially in urban areas. . . . [W]hether governmental services are proposed to be provided by a single-purpose agency, several agencies, or a multipurpose agency, responsibility should be given to the agency or agencies that can best provide government services.”

¹ All statutory citations are to the Government Code unless otherwise specified.

The purposes of LAFCOs have been established by the Legislature in section 56301 which provides, in part:

“Among the purposes of a commission are discouraging urban sprawl . . . and encouraging the orderly formation and development of local agencies based upon local conditions and circumstances. . . .”

II. THE STATUTORY BASES FOR LAFCO’S POLICY

LAFCOs are required to adopt written policies that further the purposes expressed in CKH. Section 56300, subdivision (a) states, in part:

“[E]ach commission . . . shall establish written policies and procedures and exercise its powers pursuant to this part in a manner consistent with those policies and procedures and that encourages and provides planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space and agricultural lands within those patterns.”

The powers and duties of LAFCO are set forth in section 56375. LAFCO’s primary powers are:

“(a) To review and approve or disapprove with or without amendment, wholly, partially, *or conditionally*, proposals for changes of organization or reorganization, consistent with written policies, procedures, and guidelines adopted by the commission. . . .”
(Italics added.)

LAFCO exercises its powers over city boundaries by approving or disapproving: (1) proposals for changes of organization, which are defined as, among other things, “An annexation to . . . a city or district” (§ 56021, subd. (c)); and (2) proposals for reorganization, which are defined as “[T]wo or more changes of organization initiated in a single proposal” (§ 56073).

Section 56885.5 authorizes conditional approval of a proposal based on a series of possible factors, including the initiation of proceedings on another proposal:

“(a) In any commission order giving approval to any change of organization or reorganization, the commission may make that approval conditional upon any of the following factors: [¶] (1) Any of the conditions set forth in Section 56886. [¶] (2) The initiation, conduct, or completion of proceedings for another change of organization or a reorganization.”

Section 56886 authorizes LAFCO to impose one or more of a list of conditions, including the requirement set forth in subdivision (o) that another proposal be initiated, conducted or completed:

“Any change of organization or reorganization may provide for, or be made subject to one or more of, the following terms and conditions. . . . [¶] . . . [¶] (o) The initiation, conduct, or completion of proceedings on a proposal made under, and pursuant to, this division. [¶] . . . [¶] (v) Any other matters necessary or incidental to any of the terms and conditions specified in this section. . . .”

The authority to condition approval of a proposal with the requirement that another proposal be initiated or completed is thus stated and restated in CKH with the utmost clarity. Moreover, it has long been the practice of the Ventura LAFCO to impose such a condition where deemed appropriate. The authority has been exercised in Ventura County to compel the initiation of both annexation and detachment proceedings.

III. STATE POLICY ENCOURAGES ISLAND ANNEXATIONS

The Legislature has long fostered the annexation of unincorporated islands to surrounding cities to advance its declared policies of discouragement of urban sprawl, encouragement of the orderly formation and development of local agencies, and efficient delivery of municipal services. The Annexation of Enclosed Territory Act of 1963 added Government Code sections 35400-35423 which allowed cities to annex islands of 10 acres or less without an election. (Stats. 1963, ch. 1093, pp. 2552-2556.) Those provisions were replaced in 1977 by the Municipal Organization Act (“MORGA”) which, in Government Code sections 35013, 35014 and 35150, authorized the annexation of islands of 100 acres or less without an election. (Stats. 1977, ch. 1253, § 8, § 9, pp. 4696-4697, 4709.)

The Cortese-Knox Local Government Reorganization Act of 1985, which replaced the MORGA, authorized annexations of islands of 75 acres or less without an election. (Stats. 1985, ch. 541, § 3, p. 1950, ch. 1599, § 1.3, p. 5944, § 5, pp. 5946-5948; § 56375, subd. (d).) In 1999 the Legislature enacted Assembly Bill No. 1555 (AB 1555) (Stats. 1999, ch. 921) which amended section 56375, subdivision (d) to, among other things, require LAFCO approval of island annexations, and to provide for waiver of conducting authority proceedings on such proposals. The legislative history for AB 1555 shows it was sponsored and supported by the League of California Cities. (See Senate Floor Analysis, 9/5/99, copy attached as Exhibit A.) The bill was opposed by the City of Victorville which argued it might “provide local agency formation commissions the ability to attach unincorporated islands, which would run counter to their city council policy.” The Legislature evidently determined the compelling state interest in eliminating unincorporated islands outweighed the policy of Victorville’s city council to only annex “areas where a majority of the residents and/or property owners wish to be part of the City family (the City and Districts).” (Senate Floor Analysis, p. 5.)

The comprehensive revision of the LAFCO laws in 2000 resulted in the adoption of CKH and the renumbering of the island annexation provisions without change significant to this discussion. They now appear in section 56375.3 which, until 2007, allows annexation of unincorporated islands without election or protest. Most of the island annexation laws have had sunset provisions. The CKH sunset provisions are contained in section 56375.4.

The obvious intent of the Legislature in enacting all of these statutes has been to eliminate the service inefficiencies and anomalies created by leapfrog and piecemeal city annexations. As is explained below, the State’s interest in eliminating islands has compelling importance.

The Legislature’s methods of implementing its island annexation policies were challenged by those determined to remain isolated in their unincorporated islands. In *Weber v. City Council* (1973) 9 Cal.3d 950, island residents challenged the Annexation of Enclosed Territory Act on equal protection and due process grounds. They lost. In *Scuri v. Board of Supervisors* (1982) 134 Cal.App.3d 400, island residents challenged the MORGA island annexation provisions on equal protection grounds. They lost. In a case which involved a challenge to the MORGA statutes prescribing the territory in which an election on an annexation proposal would be held, the California Supreme Court upheld the statutes, stating:

“We conclude that the state’s interest in carrying out a policy of planned, orderly community development under the guidance of the local agency formation commissions, and in particular its interest in avoiding the creation or perpetuation of islands of unwanted, unincorporated territories, is of compelling importance. . . .” (*Citizens Against Forced Annexation v. Local Agency Formation Com.* (1982) 32 Cal.3d 816, 829.)

Other cases rejecting challenges to island annexation statutes include *I.S.L.E. v. County of Santa Clara* (1983) 147 Cal.App.3d 72, *Beck v. County of San Mateo* (1984) 154 Cal.App.3d 374, and *Fig Garden Park No. 2 Assn. v. Local Agency Formation Com.* (1984) 162 Cal.App.3d 336. There have been no challenges in the appellate courts to the island annexation laws since the 1980’s.

IV. THE PLAIN LANGUAGE OF SECTIONS 56885.5, SUBDIVISION (a)(2) AND 56886, SUBDIVISION (o) AUTHORIZES THE POLICY IN HANDBOOK SECTION 3.2.3

Counsel for a developer seeking annexation of territory to the City of Simi Valley asserted in a memorandum provided to the State Legislature that:

“LAFCO legislation does not authorize LAFCO to condition reorganization proposals on annexation of other properties, including Island [sic] annexations not reasonable [sic] related to the proposal. Nor do any of the conditioning authority provisions in LAFCO authorize such broad conditioning.” (Nossaman, Guthner, Knox & Elliott, LLP Memorandum, Jan. 19, 2004, p. 6.)

If the developer’s counsel were merely asserting that there must be some rational relationship between the condition and the proposal on which it is imposed, that statement would not raise any substantial question about Handbook section 3.2.3. He claims, however, that LAFCO does not have the authority to condition reorganization proposals on the annexation of other properties. That statement is contrary to the plain language of the statutes.

The conclusion of the developer’s counsel is founded on the faulty assumption that the lengthy legislative history of the provisions which preceded section 56886,

subdivision (o) indicates the Legislature, apparently in 1975, did not intend that LAFCOs actually have the broad powers granted by the statute, and that LAFCOs, and presumably the courts, should therefore ignore the plain meaning of the words of the statute. The assertion of the developer's counsel that LAFCO cannot condition a proposal to require the initiation of "annexations not reasonable [sic] related to the proposal" appears to imply that LAFCO could require annexations which were reasonably related. But, the developer's counsel also contends the word "necessary," or perhaps the word "vital," should be impliedly read into the statute to limit the types of conditions that could be imposed. He then concludes LAFCO's exercise of its discretion is so constrained that conditions requiring the annexation of other properties are outside the scope of LAFCO's power, no matter how reasonable the condition might seem.²

The attempt to put a gloss on the plain language of section 56886, subdivision (o) appears entirely unsupported by the legislative history cited by the developer's counsel. In fact, the argument advanced by the developer's counsel does no more than illustrate why the courts generally refuse to try to read the legislative tea leaves when the plain meaning of a statute is apparent on its face.

If the meaning of a statute is unambiguous, the court will not look to legislative history to try to determine intent, for it has no need to do so. This has been explained repeatedly by the courts:

“To determine legislative intent, a court begins with the words of the statute, because they generally provide the most reliable indicator of legislative intent.’ (*Hsu v. Abbara* (1995) 9 Cal.4th 863, 871 [citation omitted].) **If it is clear and unambiguous our inquiry ends. There is no need for judicial construction and a court may not indulge in it.** (*In re Waters of Long Valley Creek Stream System* (1979) 25 Cal.3d 339, 348 [citation omitted].) ‘If there is no ambiguity in the language, we presume the Legislature meant what it said and **the plain meaning of the statute governs.**’ (*People v.*

² We note the developer's counsel did not seek to address the history of section 56885.5, subdivision (a)(2) and how it might be interpreted. The language was originally added in 1985 as section 56843, subdivision (a)(2), upon the original adoption of the Cortese-Knox Local Government Reorganization Act of 1985.

Snook (1997) 16 Cal.4th 1210, 1215 [citation omitted].” (*Diamond Multimedia Systems, Inc. v. Superior Court* (1999) 19 Cal.4th 1036, 1047, emphasis added.)

The developer’s attorney has ignored this elementary rule of statutory construction and has asserted that a word or words should be read into the statute. This assertion violates another elementary rule of statutory construction:

“We will not speculate that the Legislature meant something other than what it said. **Nor will we rewrite a statute to posit an unexpressed intent.** [Citation omitted.] If the intent of the Legislature cannot be gleaned from the language of the statute, we may consider the legislative history of the statute. [Citations omitted].” (*Morton Engineering & Construction, Inc. v. Patscheck* (2001) 87 Cal.App.4th 712, 716, emphasis added.)

If a court finds a statute ambiguous and does review its legislative history, it will not rely on the statements of a single legislator:

“We have frequently stated, moreover, that the statements of an individual legislator, including the author of a bill, are generally not considered in construing a statute, as the court’s task is to ascertain the intent of the Legislature as a whole in adopting a piece of legislation. [Citations omitted.]” (*Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1062.)

Here, the language in question appears twice, albeit with a slight variation. As stated clearly, unequivocally, and unambiguously in section 56885.5, subdivision (a)(2), approval of a proposal such as the reorganization expected from the City of Simi Valley may, in the discretion of the Commission, be conditioned on: “The initiation, conduct, or completion of proceedings for another change of organization or a reorganization. . . .” This appears to be as plain and unambiguous as any legislature could make it. The language of section 56886, subdivision (o) is equally unambiguous: “(o) The initiation, conduct, or completion of proceedings on a proposal made under, and pursuant to, this division.”

Everett Millais
May 10, 2004
Page 9

There is no need to seek some hidden meaning for these statutes in the tea leaves of legislative history; indeed, the courts instruct us not to do so. The power to condition, in the plain words of the statutes, includes the power to require the initiation of any other change of organization or reorganization. It is, of course, reasonable to presume such a condition must have some rational relationship to the proposal before the commission, but such a relationship is made self-evident in the Commission's policy. It is, quite simply, that if a city is to be allowed to substantially expand its boundaries, outward it must first initiate the process to establish orderly, efficient boundaries in those areas where it has previously been allowed to develop haphazardly.

CONCLUSION

The assertions of the City of Simi Valley and the developer's counsel regarding the authority of LAFCO to adopt the policy in Handbook section 3.2.3 are unpersuasive. The plain language of CKH grants the Commission broad discretion to impose the conditions in furtherance of the compelling state interest in eliminating unincorporated island territories.

NAK:csb

Attachment

cc: Leroy Smith, Chief Assistant County
Counsel
James W. Thonis, Litigation Supervisor

G:\cc\NAK\LAFCO\island annex pol.wpd

BILL ANALYSIS

SENATE RULES COMMITTEE	AB 1555
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 445-6614 Fax: (916)	
327-4478	

THIRD READING

Bill No: AB 1555
Author: Longville (D)
Amended: 9/3/99 in Senate
Vote: 21

SENATE LOCAL GOVERNMENT COMMITTEE : 4-0, 7/14/99
AYES: Johnston, Monteith, Perata, Polanco
NOT VOTING: Baca, Johannessen, Rainey

ASSEMBLY FLOOR : 46-30, 5/24/99 - See last page for vote

SUBJECT : Annexation of unincorporated islands

SOURCE : League of California Cities

DIGEST : This bill requires a local agency formation commission to approve the annexation of territory to a city if it meets specified criteria. (See Analysis for specifics.)

Senate Floor Amendments of 9/3/99 limit cities' island annexations to 75 acres in all counties.

Senate Floor Amendments of 8/31/99 allow cities in 19 big counties to annex larger islands and prevent the expedited annexation of Redlands "doughnut hole."

ANALYSIS : County islands are pockets of unincorporated territory that are surrounded by city limits. A recent survey reported about 600 unincorporated islands in 37 counties. It's hard for county officials to serve many of

CONTINUED

these islands because they have to drive miles to get to just a few residents. City officials say that island residents use city facilities and services without paying city taxes. Some counties and cities want to eliminate their unincorporated islands to save taxpayers' money and to clarify who's responsible for serving local residents:

The Legislature has plenary authority over local governments' boundaries. The Cortese-Knox Act set up local agency formation commissions (LAFCO's) as the Legislature's "watchdogs" over boundary changes. The Act requires five --- sometimes six --- steps before a city can annex inhabited territory:

1. Preliminaries (sphere of influence designated, property tax exchange).
2. Application (city council resolution or petition by 5% of voters or landowners).
3. LAFCO review and approval (report, public hearing, approval or denial).
4. Protests (city council holds a noticed public hearing):
 - A. If protests are 0-25%, the annexation proceeds without an election.
 - B. If protests are 25-50%, the annexation proceeds subject to voter approval.
 - C. If protests are over 50%, the annexation stops.
5. Election (requires majority voter approval in the affected area).
6. Completion (file formal documents).

When the Legislature reformed the city annexation laws in 1977, it created an expedited procedure for annexing unincorporated islands. LAFCO could approve an island annexation without an election if the area met five conditions. In the first three years of the law, cities in 29 different counties annexed 372 islands. The island

annexation law was supposed to sunset in 1981 but delays caused by court cases and legislative extensions kept the law in effect until 1988.

This bill requires a local agency formation commission (LAFCO) to approve the annexation of territory to a city if it meets six criteria:

1. The territory is 75 acres or less, the area constitutes the entire island, and the island does not constitute part of an unincorporated area larger than 100 acres in area.

This bill specifically exempts Laguna Beach's Emerald Bay "island" from the expedited annexation procedures.

Current law requires at least five steps before a city can annex unincorporated territory. From 1977 to 1988, state law allowed cities to use an expedited procedure to annex "unincorporated islands" (pockets of unincorporated territory surrounded by a city) without elections.

This bill allows cities to use an expedited procedure to annex "unincorporated islands" without elections if they meet six criteria. An island can be any size in the cities in the 19 most populous counties, but must be 75 acres or smaller for cities in the 39 less populated counties.

This bill exempts Redlands' "doughnut hole" property (the subject of AB 1553 - Calderon) from the expedited annexation procedures.

2. The territory constitutes an entire unincorporated island within a city, or constitutes a collection of individual unincorporated islands.

3. The territory is surrounded by incorporated territory, county boundaries, or the Pacific Ocean.

4. The territory is substantially developed or developing.

5. The territory is not prime agricultural land.

6. The territory will benefit from the annexation or is receiving benefits from the annexing city.

Until January 1, 2007, this bill allows a LAFCO to approve the annexation of territory to a city, after notice and hearing, and allow the city council to annex the territory without an election if the territory meets the same six criteria. This bill also allows LAFCO to waive the requirements for the city council to hold a protest hearing and an election if the city applied for the annexation and the territory meets the same six criteria. When approved by LAFCO, the city council must either annex the territory without an election or stop the proceedings.

This bill's authority to expedite the annexation of unincorporated islands expires January 1, 2007. That time period, however, does not include the time that a court enjoins the statute. The bill's authority to expedite the annexation of unincorporated islands does not apply to islands created after January 1, 2000. If a LAFCO or a city turns down an island annexation, local officials must wait two years before trying again.

This bill excludes from the definition of "surrounded" an island that is a gated community where services are provided by a community services district.

FISCAL EFFECT : Appropriation: No Fiscal Com.: No
Local: No

SUPPORT : (Unable to reverify at time of writing)

League of California Cities (source)
Orange County Division of the League of California Cities
Cities of Bakersfield, Claremont, Costa Mesa, Cupertino,
Moreno Valley, Rancho Cucamonga, Redding and Stockton
Santa Clara County
California State Association of Counties
Orange County LAFCO
California Association of Local Agency Formation
commissions

OPPOSITION : (Unable to reverify at time of writing)

Cities of Victorville
Sandy Beach Improvement Association, Inc.
Solano County
Starr Subdivision Improvement Area
West Coast Protective League
Home Acres Improvement Association Inc.

ARGUMENTS IN SUPPORT : According to the Senate Local Government Committee analysis, county islands exist because local officials took the path of least political resistance and annexed around recalcitrant neighbors. The suburban impulse pushed and pulled city limits outwards but it was easier to skip over opponents than it was to convince them of the benefits of annexation. Before Proposition 13, annexation to a city meant paying higher property taxes. Now with a constitutionally guaranteed 1% tax rate, that difference is gone. What's left behind are hundreds of unincorporated islands that are costly for county workers to serve, tough for county supervisors to represent, and confusing for their residents. This bill responds to these problems by temporarily reinstating the expedited process for annexing unincorporated islands.

The sponsors contend that this bill, which re-establishes the prior authority to allow cities to annex islands without the protest process over a seven-year period, will help cities and counties streamline their service delivery systems by making it easier for unincorporated islands to be annexed into cities.

ARGUMENTS IN OPPOSITION : The City of Victorville cites their city council's long-standing policy only annexing areas where a majority of the residents and/or property owners wish to be part of the City family (the City and Districts). They state that this bill could provide local agency formation commissions the ability to attach unincorporated islands, which would run counter to their city council policy.

West Coast Protective League states that a great number of their members are currently employed by manufacturers whose facilities are located in industrial parks and border cities, and that this bill twists the definition of an "island" so as to make it easier for cities to attempt to

swallow up these industrial parks through annexation. They contend that the result will be endless battles between cities and counties, and ultimately could create enough of a disruption that businesses would simply relocate. _

-

ASSEMBLY FLOOR :

AYES: Alquist, Aroner, Bock, Calderon, Cardenas, Cardoza, Cedillo, Correa, Davis, Ducheny, Dutra, Firebaugh, Florez, Floyd, Gallegos, Havice, Hertzberg, Honda, Jackson, Keeley, Knox, Kuchl, Lempert, Longville, Lowenthal, Machado, Mazzoni, Migden, Nakano, Reyes, Romero, Scott, Shelley, Soto, Steinberg, Strom-Martin, Thomson, Torlakson, Vincent, Washington, Wayne, Wesson, Wiggins, Wildman, Wright, Villaraigosa

NOES: Aanstad, Ackerman, Ashburn, Baldwin, Bates, Battin, Baugh, Brewer, Briggs, Cox, Cunneen, Frusetta, Granlund, House, Kaloogian, Leach, Leonard, Maddox, Maldonado, Margett, McClintock, Olberg, Oller, Robert Pacheco, Rod Pacheco, Pescetti, Runner, Strickland, Thompson, Zettel

NOT VOTING: Campbell, Corbett, Dickerson, Papan

LB:cm 9/5/99 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****